

1. **Section 271AAA and section 271(1)(c) operate exclusively.** The ingredients of section 271AAA vary substantially from that of section 271(1)(c) (*Explanation 5*), in as much as the former provides for substantiation of the manner in which the undisclosed income, as disclosed as per section 132(4), is derived by the assessee. In fact, the Commissioner (Appeals) records the ingredients of *Explanation 5* to section 271(1)(c), while *Explanation 5A* to section 271(1)(c) alone is relevant for a search initiated under section 132 on and after 1-6-2007, as in the instant case; the former applying only in case of a search initiated before 1-6-2007. The two sections, *i.e.*, section 271(1)(c) and section 271AAA are not only worded differently, with thus different concomitant scopes, are rather mandated to operate exclusively. The foregoing would bring forth the basis as well as the validity of the initial observation that the Commissioner (Appeals) had misapplied grossly himself in the matter. [ACIT vs. **Prakash Steelage Ltd .**]/[2015] 38 ITR(T) 582 (Mumbai - Trib.)/[2015] 153 ITD 493 (Mumbai - Trib.)/[2015] 168 TTJ 137 (Mumbai - Trib.)]
2. **Whether software used as raw material for manufacturing another software is to be treated as revenue expenditure.** The basic fact that the assessee utilised the software purchase as raw material in business of exporting software was not at all noticed. Since the assessee purchased software as a raw material in its business of exports, the same cannot be considered as capital in nature, as this is not asset in its business but a component in the process of manufacturing/export of software. A car if it is traded by a dealer, it will be a revenue item, whereas, the same car used by a taxi operator for the business of transporting persons, will be a capital asset. Just because a car is purchased by a dealer, the same cannot be considered as capital expenditure. Likewise, software purchased by the assessee for ultimate export either as embedded software or as part of project undertaken by it cannot be considered as capital expenditure, as the assessee is not using the software as an asset of the business but as raw material in its business. [**Lampex Electronics Ltd.v. Deputy Commissioner of Income-tax** [2014] 36 ITR(T) 672 (Hyderabad – Trib)]