

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

Appeal No.	Appellant		Respondent	Assessment Year
ITA No. 3324/Bang/2018	The Income Tax Officer, Ward – 7 (1) (2), Bangalore.	Vs.	M/s. Triad Resorts and Hotels Pvt. Ltd., 'Aparanta', 2208, HAL 3 rd Stage, 80 Feet Road, Kodihalli, Bangalore – 560 008. PAN: AAACV5595Q	2008-09
ITA No. 3325/Bang/2018	The Income Tax Officer, Ward – 7 (1) (3), Bangalore.		M/s. Verde Developers Pvt. Ltd., Aparanta', 2208, HAL 3 rd Stage, 80 Feet Road, Kodihalli, Bangalore – 560 008. PAN: AAACV5595Q	
C.O. No. 04/Bang/2019 (in ITA No. 3324/Bang/2018)	M/s. Triad Resorts and Hotels Pvt. Ltd., 'Aparanta', 2208, HAL 3 rd Stage, 80 Feet Road, Kodihalli, Bangalore – 560 008. PAN: AAACV5595Q		The Income Tax Officer, Ward – 7 (1) (2), Bangalore.	
C.O. No. 05/Bang/2019 (in ITA No. 3325/Bang/2018)	M/s. Verde Developers Pvt. Ltd., Aparanta', 2208, HAL 3 rd Stage, 80 Feet Road, Kodihalli, Bangalore – 560 008. PAN: AAACV5595Q		The Income Tax Officer, Ward – 7 (1) (3), Bangalore.	

Assessee by	:	Dr. C.P. Ramaswami, Advocate
Revenue by	:	Shri R.N. Siddappaji, Addl. CIT (DR)
Date of hearing	:	24.06.2019
Date of Pronouncement	:	28.06.2019

ORDER

Per Bench:

Both these appeals are filed by the revenue and both the C.Os. are filed by the respective assesseees for Assessment Year 2008-09 in the proceedings u/s. 271(1)(c) of IT Act. The assessee involved are two different assesseees. But the issue in dispute and the orders of CIT(A) are almost identical and these were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the revenue in its appeal in the case of M/s. Triad Resorts and Hotels Pvt. Ltd. in ITA No. 3324/Bang/2018 are as under.

*“1. The order of the learned CIT(A) is opposed to facts of the case.
2. The CIT(A) erred in holding that the notice issued under section 271 r.w.s 274, without specifically mentioning whether the proceedings are initiated against concealment of income or on account of furnishing of inaccurate particulars is invalid and thereby setting aside the penalty order u/s 271(1)(c)?
3. The CIT(A) erred in not appreciating the fact that in the present case, as discussed by the AO in the penalty order, the assessee had filed inaccurate particulars in respect of two incomes and had concealed the particulars in respect of another income and thus the penalty was leviable for filing of inaccurate particulars of income as well as for concealment of particulars of income.
4. The CIT(A) erred in not considering the fact that the Assessing Officer has mentioned in his penalty order that, the penalty was levied for concealment of particulars and furnishing of inaccurate particulars of income for the relevant assessment year and nowhere the word 'or' was used by him.
5. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.
6. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.”*

3. Similarly, the grounds raised by the revenue in the second appeal in the case of M/s. Verde Developers Pvt. Ltd. in ITA No. 3325/Bang/2018 are as under.

*“1. The order of the learned CIT(A) is opposed to facts of the case.
2. The CIT(A) erred in holding that the notice issued under section 271 r.w.s 274, without specifically mentioning whether the proceedings are initiated against concealment of income or on account of furnishing of inaccurate particulars is invalid and thereby setting aside the penalty order u/s 271(1)(c)?
3. The CIT(A) erred in not appreciating the fact that in the present case, the assessee had filed inaccurate particulars in respect of cost of improvement and had concealed the particulars in respect of sale consideration and thus the penalty was leviable for filing of inaccurate particulars of income as well as for concealment of particulars of income.
4. The CIT(A) erred in not considering the fact that the Assessing Officer has mentioned in his penalty order that, the penalty was levied for concealment of particulars and furnishing of inaccurate particulars of income for the relevant assessment year and nowhere the word 'or' was used by him.
5. For these and other grounds that may be urged at the time of hearing,*

it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

6. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.”

4. The Id. DR of revenue supported the penalty orders. He also submitted that Id. CIT(A) has followed the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory as reported in (2013) 359 ITR 565. But this judgment is not applicable in the facts of present case and therefore, the order of Id. CIT(A) should be reversed and that of AO should be restored. He also drawn our attention to Para 8 of the penalty order and submitted that in this Para, the AO has considered the judgment of Hon'ble Apex Court rendered in the case of MAK Data P. Ltd. Vs. CIT as reported in 358 ITR 593. He also submitted that in this para, the AO has given a categorical finding that the assessee company has concealed particulars of income and furnished inaccurate particulars of income. He submitted that it is clear from the penalty order that the assessee is guilty of both i.e. concealment of income and furnishing of inaccurate particulars of income and therefore, this judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra) is not applicable. He placed reliance on the judgment of Hon'ble Apex Court rendered in the case of Sundaram Finance Ltd. Vs. DCIT as reported in [2018] 99 taxmann.com 152 (SC). He submitted a copy of this judgment. He pointed out that as per this judgment of Hon'ble Apex Court, the SLP filed by the assessee against the judgment of Hon'ble Madras High Court rendered in the case of Sundaram Finance Ltd. Vs. CIT as reported in 403 ITR 407 was dismissed by Hon'ble Apex Court. He submitted that in this case also, this was the judgment of Hon'ble Madras High Court that the assessee is guilty of both i.e. concealment of income and furnishing of inaccurate particulars of income and in the present case also, this is the finding of AO in para 8 of the penalty order that the assessee is guilty of both i.e. concealment of income and furnishing of inaccurate particulars of income and therefore, this judgment is applicable in the present case. He also placed reliance on another judgment of Hon'ble Apex Court rendered in the case of Sky Light

Hospitality LLP Vs. ACIT as reported in 303 CTR 130 (SC) and submitted that in this case, although the issue involved was regarding validity of reassessment proceedings u/s. 147 and 148 of IT Act, it was held by Hon'ble High Court in that case that although the notice u/s. 148 was issued in the name of erstwhile company despite company ceasing to exist as it had been converted into LLP, it was held by Hon'ble High Court that this error would not invalidate re-assessment proceedings as same was not a jurisdictional error but an irregularity and procedural / technical lapse which could be cured u/s. 292B of IT Act. It is submitted that in the present case also, even if there is some mistake in the notice issued by the AO u/s. 274, it should be held that this is a procedural / technical lapse which could be cured u/s. 292B of IT Act and hence, the penalty is justified. He also placed reliance on the judgment of Hon'ble Kerala High Court rendered in the case of Parisons Roller Flour Mills (P) Ltd. Vs. CIT as reported in (2019) 176 DTR 377 (Kerala).

5. As against this, the Id. AR of assessee supported the order of CIT(A). He placed reliance on the same judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra). He also submitted that in para 7.4 of his order, the Id. CIT(A) has also followed another judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. SSA'S Emerald Meadows as reported in [2016] 73 taxmann.com 241 (Karnataka) and he pointed out that in this case also, Hon'ble Karnataka High Court has held that since the matter is covered by the judgment of the division bench of the Hon'ble Karnataka High Court, there is no question of law arising in that case before the Hon'ble Karnataka High Court and therefore, the appeal of the revenue was dismissed. The Id. DR of revenue also sought to place reliance on another judgment of Hon'ble Karnataka High Court as reported in 396 ITR but he could not point out page no. of such decision and in spite of this, we tried to locate the decision of Hon'ble Karnataka High Court reported in 396 ITR but found that several judgments of Hon'ble Karnataka High Court are reported in 396 ITR but these are not in favour of the revenue. There are certain decisions of Hon'ble Karnataka High Court reproduced in this ITR 396 but these judgments are in favour of the assessee.

6. We have considered the rival submissions. First of all, we reproduce relevant para from the order of CIT(A). These paras are para nos. 7 to 7.7 of his order and these paras are reproduced hereinbelow for ready reference.

"7. In ground of appeal 3, the appellant has contended that the notice u/s 274 is defective as the same is not in accordance with law. It is submitted that the AO has mentioned in the impugned penalty order at para 11 that the penalty was levied for concealment of income and furnishing of inaccurate particulars of income. But as per the decision of the Hon'ble Karnataka HC in the case of Manjunath Cotton Ginning Factory 359 ITR 565, the requirement of the law is that the notice u/s 274 has to clearly mention about concealment or furnishing of inaccurate particulars of income. Thus, the appellant argued that the notice u/s 274 is incurable infirmity.


7.1 The submission of the appellant has been considered. Penalty proceedings u/s 271(1)(c) has been initiated by the AO during the assessment proceedings and the direction relating to initiation of penalty in the assessment order reads as follows:

"Penalty u/s 271(1) (c) initiated separately".

The notice u/s 274 read with Section 271(1)(c) of the Act issued by the AO on 22.12.2010 reads as under:

"Whereas in the course of proceedings before me for the assessment year 2008-09 it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income. The notice is scanned and pasted below:

REGISTERED POST WITH ACKNOWLEDGEMENT DUE

 **INCOME TAX DEPARTMENT**
OFFICE OF THE INCOME TAX OFFICER,
WARD-12(2), 4TH FLOOR, R.P. BHAVAN,
NRUPATHUNGA ROAD, BANGALORE-560001
PHONE: 22484215 DATE: 22.12.10

F.NO.

NOTICE UNDER SECTION 274 READ WITH
SECTION 271 OF THE INCOMETAX ACT 1961

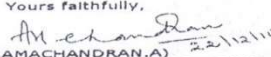
To
M/s. Triad Resorts & Hotels Pvt. Ltd.
2208, 4th floor,
11th Aⁿ, 1st Stage,
B'lore - 8.

PAN: AAAC T 6316P
A.Y: 2008-09

Sir/Madam,

Whereas in the course of proceedings before me for the Asst. Year: 2008-09, it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 2 PM AM on 22.12.10 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271.

Yours faithfully,

(RAMACHANDRAN.A) 22/12/10
INCOME TAX OFFICER: WARD-12(2)
BANGALORE.

Certified True Copy
For Triad Resorts & Hotels Pvt. Ltd.

SEAL

Director

7.2 In the case of Manjunath Cotton (Supra), on identical facts, the jurisdictional High Court decided as follows:

“NOTICE UNDER SECTION 274

59. *As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation-1 or in Explanation-1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.*

60. *Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet.*

Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.

61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pai reported in 292 ITR 11 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujrat High Court in the case of MANU ENGINEERING reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.”

7.3 This decision of the jurisdictional HC was followed by the Jurisdictional ITAT Bangalore in the case of Shri H Lakshminarayana v ITO in ITA No 992 to 996/Bang/2014. The relevant part of the same reads as follows:

“16. It is clear from the aforesaid decision that on the facts of the present case that the show cause notice u/s. 274 of the Act is defective as it does not spell out the grounds on which the penalty is sought to be imposed.

In our view, the aforesaid defect cannot be said to be curable u/s. 292BB of the Act, as the defect cannot be said to be a notice which is in substance and effect in conformity with or according to the intent and purpose of the Act. Following the decision of the Hon'ble

Karnataka High Court, we hold ITA Nos.992 to 996/Bang/2014 that the orders imposing penalty in all the assessment years have to be held as invalid and consequently penalty imposed is cancelled.”

7.4 On identical facts, in the case of Commissioner of Income-tax, Bangalore v. SSA'S Emerald Meadows [2016] 73 taxmann.com 241 (Karnataka), the HC held as follows:

“2. This appeal has been filed raising the following substantial questions of law:

“(1) Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid despite the amendment of Section 271(1B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?”

3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’) to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.

The SLP of the department in the above case was dismissed by SC

in Commissioner of Income-tax v. SSA's Emerald Meadows [2016] 73 taxmann.com 248 (SC)."

7.5 *In the case of Sh S Chandrashekhar v ACIT ITA No 386/2016 dt 15.02.2017 too, the HC allowed the appeal of the assessee by holding as follows:*

"7. We may record that during the course of hearing the learned counsel for the appellant has tendered the copy of notice issued to the assessee under Section 271(1)(c) of the Act dated 15.12.2008 for imposition of penalty, which as per the learned counsel for appellant was a part of record in the proceedings before the Tribunal. Learned counsel for the respondent - revenue is unable to dispute that notice dated 15.12.2008 was issued by the Department for imposition of penalty under Section 271(1)(c) of the Act. Hence, said notice for the purpose of consideration is taken on record. Said notice disclose that it is a printed notice and further no specific ground is mentioned, which may show that the penalty could be imposed on the particular ground for which said notice was issued. If the decision of this Court in case of COMMISSIONER OF INCOME-TAX AND ANOTHER vs. MANJUNATHA COTTON AND GINNING FACTORY reported in [2013] 359 ITR 565 (KAR) (supra) is considered, this Court in the said decision had observed at paragraph 63 as under:

"63. In the light of what is stated above, what emerges is as under:

(a) Penalty under Section 271(1)(c) is a civil liability.

(b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.

(c) Willful concealment is not an essential ingredient for attracting civil liability.

(d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.

(e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.

(f) Ever if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A) & 1(B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

(g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(1)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).

(h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.

(i) The imposition of penalty is not automatic.

(j) Imposition of penalty even if the tax liability is admitted is not automatic.

(k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty

proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.

(l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.

(m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

(n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.

(o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

(p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income.

(q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

(r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

(s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

(t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

(u) The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings.

The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

8. We are not required to consider the other contingencies for examination of legality and validity of the penalty under Section 271(1)(c) of the Act, but clauses (p), (q) & (r) of the above referred observations are required to be considered.

9. As per the above referred decision of this Court, the notice would have

to specifically state the ground mentioned in Section 271 (1)(c) of the Act namely as to whether it is for the concealment of income or furnishing incorrect particulars of the income said penalty proceedings is being initiated. Second aspect is that, as held by this Court, sending of printed form wherein the grounds mentioned in Section 271 of the Act would not satisfy the requirement of law. The third aspect for which the observations are made by this Court is that, the assessee should know the ground which he has to meet specifically otherwise the principles of natural justice would be violated and consequently, no penalty could be imposed on the assessee if there is no specific ground mentioned in the notice. No specific ground is mentioned in the subject notice and resultantly the principles of natural justice could be said as violated.

10. In our view, if the observations made by this Court in the above referred decision and more particularly clauses (p), (q) and (r) are considered, it was a case wherein the decision of this Court would apply and it cannot be said that the decision of this Court in the case of COMMISSIONER OF INCOME-TAX AND ANOTHER vs. MANJUNATHA COTTON AND GINNING FACTORY reported in [2013] 359 ITR 565 (KAR) (supra) would not apply.

11. In view of the aforesaid discussion, if the decision of this Court in case of COMMISSIONER OF INCOME-TAX AND ANOTHER vs. MANJUNATHA COTTON AND GINNING FACTORY reported in [2013] 359 ITR 565 (KAR) (supra) is considered, the resultant effect would be that the notice in question issued under Section 271(1)(c) for levy of penalty and consequently the penalty imposed, both would be unsustainable and cannot stand in the eye of law.”

7.6 In view of the binding decisions of the jurisdictional High Court and the decision of Supreme Court on identical issue, the penalty levied by the AO under Section 271(1)(c) cannot be legally sustained and the same is deleted.

7.7 Considering above, the ground of appeal 3 of the appellant is allowed. Consequently, the remaining grounds of appeal become only academic and as such no specific adjudication is required for those grounds.”

7. We find that Id. CIT(A) has reproduced the notice issued by the AO u/s. 274 r.w.s. 271(1) of IT Act, 1961 and in that notice, the AO has not struck down the irreverent portion and hence, the notice has not specified the charge of the AO as to whether the assessee is guilty of concealment of income or furnishing of inaccurate particulars of income. In para no. 61 of the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra) which is reproduced by CIT(A) in para 7.2 of his order as reproduced above, it is noted by Hon'ble Karnataka High Court that the AO while issuing notice has to come to the conclusion that

whether it is a case of concealment of income or it is a case of furnishing of inaccurate particulars of income. In fact, in para no. 63 of this judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra), it is noted by Hon'ble Karnataka High Court that the assessee should note the grounds which he has to meet specifically because otherwise, principle of natural justice is affected, and therefore, on the basis of such proceedings, no penalty should be imposed on the assessee. In view of this specific finding of Hon'ble Karnataka High Court in this case, merely this fact that in the penalty order, the AO has stated that assessee is guilty of both defaults will not improve the case of revenue because in the absence of clear charge of AO in the penalty notice issued by him u/s. 274 r.w.s. 271 of IT Act, this default of revenue regarding violation of principle of natural justice continues because in such a situation, the assessee does not know at that stage regarding the ground which he has to meet specifically. For ready reference, we reproduce this para no. 63 of this judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra).

“63. In the light of what is stated above, what emerges is as under:

- a) Penalty under Section 271(1)(c) is a civil liability.*
- b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*
- c) Willful concealment is not an essential ingredient for attracting civil liability.*
- d) Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.*
- e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.*
- f) Even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A) & (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.*
- g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(1)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).*
- h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.*
- i) The imposition of penalty is not automatic.*
- j) Imposition of penalty even if the tax liability is admitted is not automatic.*
- k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order*

that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.

l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.

m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

n) The direction referred to in Explanation 1B to Section 271 of the Act should be clear and without any ambiguity.

o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

p) Notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income

q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

u) The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings.

The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

8. As per the above discussion particularly clauses (p) to (s) of Para 63 of this judgment as reproduced above, we are satisfied that in the facts of present case, this judgment of Hon'ble Karnataka High Court is squarely applicable

and therefore, we find no infirmity in the order of CIT(A) as per which he has deleted the penalty by respectfully following this judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra).

9. Having held so, now we examine the applicability of various judgments cited by Id. DR of revenue. The first judgment cited by him is the judgment of Hon'ble Apex Court rendered in the case of Sundaram Finance Ltd. Vs. DCIT (supra) and also the judgment of Hon'ble Madras High Court in the same case as reported in 403 ITR 407. Para nos. 16 and 17 of this judgment of Hon'ble Madras High Court rendered in the case of Sundaram Finance Ltd. Vs. CIT (supra) are relevant and hence, we reproduce these paras from this judgment.

“16. We have perused the notices and we find that the relevant columns have been marked, more particularly, when the case against the assessee is that they have concealed particulars of income and furnished inaccurate particulars of income. Therefore, the contention raised by the assessee is liable to be rejected on facts. That apart, this issue can never be a question of law in the assessee's case, as it is purely a question of fact. Apart from that, the assessee had at no earlier point of time raised the plea that on account of a defect in the notice, they were put to prejudice. All violations will not result in nullifying the orders passed by statutory authorities. If the case of the assessee is that they have been put to prejudice and principles of natural justice were violated on account of not being able to submit an effective reply, it would be a different matter. This was never the plea of the assessee either before the Assessing Officer or before the first Appellate Authority or before the Tribunal or before this Court when the Tax Case Appeals were filed and it was only after 10 years, when the appeals were listed for final hearing, this issue is sought to be raised. Thus on facts, we could safely conclude that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under Section 274 r/w. Section 271 of the Act. Therefore, principles of natural justice cannot be read in abstract and the assessee, being a limited company, having wide network in various financial services, should definitely be precluded from raising such a plea at this belated stage.

17. Thus, for the above reasons, Substantial Questions of law Nos. 1 and 2 are answered against the assessee and in favour of the revenue. The additional substantial question of law, which was framed is rejected on the ground that on facts the said question does not arise for consideration as well as for the reasons set out by us in the preceding paragraphs.”

10. From the above paras reproduced from this judgment of Hon'ble Madras High Court rendered in the case of Sundaram Finance Ltd. Vs. CIT (supra), we find that in that case, the issue regarding defect in the penalty notice was not raised by assessee in that case before the AO or CIT(A) or before the Tribunal or even before the Hon'ble High Court and this question was raised at the time of hearing of the appeal before the Hon'ble High Court and it was noted by Hon'ble Madras High Court that this issue is raised after 10 years when the appeals are listed for final hearing and therefore, under these facts, it was held by Hon'ble Madras High Court that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under Section 274 r.w. Section 271 of the IT Act. In the present case, the facts are different because this issue was raised by assessee before CIT(A) also and therefore, in our considered opinion, this judgment of Hon'ble Madras High Court and the subsequent judgment of Hon'ble Apex Court in that case as per which SLP was dismissed are not applicable in the present case.
11. The next judgment cited by Id. DR of revenue is the judgment of Hon'ble Apex Court rendered in the case of Sky Light Hospitality LLP Vs. ACIT (supra). In this case, the issue involved was regarding defects in the notice of reassessment issued by the AO u/s. 147 and 148 of IT Act. The notice in that case was issued in the name of erstwhile company despite company ceasing to exist as it had been converted into LLP and under those facts, it was held that section 292B of IT Act is applicable and hence, the defect in the notice can be cured because only wrong name was given in the notice. It was held that it was merely a clerical error which could be corrected u/s. 292B of IT Act. In the present case, the issue involved is regarding defect in penalty notice and that too not regarding defect in the name but regarding the defect in the allegation and hence, in our considered opinion, this judgment is also not applicable in the present case.
12. The next judgment cited by Id. DR of revenue is the judgment of Hon'ble Kerala High Court rendered in the case of Parisons Roller Flour Mills (P) Ltd. Vs. CIT (supra). Four question of law were raised in that case which are as under.
 - “1. Whether on the facts and circumstances of the case the Hon'ble Tribunal was justified in directing the assessing officer to re-work the quantum of penalty in terms of the order of the Hon'ble High Court?
 2. Whether on the facts and circumstances of the case the Hon'ble Tribunal was justified in directing the assessing officer to recompute the penalty when there was no clear finding of concealment of income?
 3. Whether there were materials before the appellate Tribunal to come to a conclusion that there is a concealment of income for levy of penalty under Section 271(1)(c) of the Income Tax Act?
 4. Whether on the facts and circumstances of the case is not the order

of penalty dated 31.07.2008 barred by limitation in terms of the CBDT Circular reported in 290 ITR (st) 86 which is binding on the assessing officer?"

13. From the questions of law raised before Hon'ble Kerala High Court in that case as reproduced above, it is seen that in that case, this was not the issue in dispute that whether there is defect in the notice issued by the AO u/s. 274 r.w.s. 271 of IT Act.
14. In view of above discussion, we find that none of the judgments cited by Id. DR of revenue is rendering any help to revenue.
15. In the result, both the appeals filed by the revenue are dismissed.
16. In view of dismissal of the appeals of revenue, both the C.Os. filed by the assessee have become infructuous and hence, the same are dismissed.
17. In the result, both the C.Os. filed by the assessee are dismissed as infructuous.
18. In the combined result, both the appeals of the revenue and both the C.Os. of assessee are dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,

Dated, the 28th June, 2019.

/MS/

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.