

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "A", BANGALORE**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER  
AND  
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.3274(Bang)/2018  
(Assessment Year : 2007-08)**

Shri Suryanarayana Gnaneshwara Rao,  
No.83, NISA Enclave, MM Road,  
Fraser Town,  
Bangalore-560 005  
PANNo.AEMPR9001C

Appellant

**Vs**

The Income tax Officer,  
Ward-1(2),  
Bangalore

Respondent

**Appellant by : Smt. Jinita Chatterjee, Advocate  
Revenue by : Shri Praveen Karanth, Addl. CIT**

**Date of hearing : 20-06-2019**

**Date of pronouncement : 28-06-2019**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER :**

Present appeal has been filed by assessee against order dated 20/09/18, passed by Ld. CIT (A)-2, Bangalore on following grounds of appeal:

- i. The Assessing officer erred in levying penalty under section 271(1)(c) of the Act.*
- ii. The Assessing Officer ought to have appreciated that the action of the appellant neither amounted to*

*concealment of his income of furnishing of inaccurate particulars about his income and therefore no penalty under section 271(1)(c) of the Act was eligible.*

- iii. Without prejudice the Assessing Officer ought to have appreciated that the appellant had bonafide offered only the income that was received by him during the year and therefore, the same did not attract the guilt within the meaning of section 271(1)(c ) of the Act.*
- iv. Without prejudice the Assessing Officer ought to have appreciated that the balance amount was offered to tax during the assessment year 2008-09 during which time the same was actually received and therefore, the AO ought to have levied the penalty under section 271(1)(c ) of the Act.*
- v. Without prejudice, he Assessing Officer ought to have appreciated that just because the deductor had issued TDS certificates though the entire amount was actually not paid to the appellants, the appellant could not be penalized for the said mistake of the deductor and therefore, the AO ought to have refrained from levying the penalty under section 271(1)(c ) of the Act.*
- vi. Without prejudice, the penalty as levied is arbitrary, excessive, unsustainable and liable to be deleted.*
- vii. For these and such other grounds that may be urged at the time of hearing, the appellant prays that the appeal may be allowed”.*

2. Brief facts of the case are as under:

Assessee is an individual, and is Proprietor of M/s Nag Interiors, running business as interior decorator. For year under consideration assessee filed his return of income on 31/10/07 declaring total income of Rs.4,65,649/-. The said return filed was processed under section 143 (1) of the Act, and subsequently case was selected for scrutiny. Statutory notices under section 143 (2) along with questionnaire and notice under section 143 (1) was issued to assessee and assessment was completed determining total income at Rs.25,85,833/-.

3. In the course of assessment proceedings, it was found that assessee received contract receipts of Rs. 72,96,469/- from M/s Cuthberts Textiles India (P)Ltd., (formerly known as M/s Cuthberts Babywear Pvt.Ltd.) during the year under consideration, whereas accounted for only Rs.50,25,833/-. Assessee was show caused in regards to the same. Assessee in reply stated that project with M/s Cuthbert Babywear Pvt.Ltd., was an ongoing one and that the bills were raised a and when work was over.

4. In the return of income filed by assessee, assessee claimed TDS credit of Rs.1,58,5604/- being TDS on contract receipt of Rs.72,96,469/- from M/s Cuthberts Babywear Pvt.Ltd. Ld. AO w of the opinion that M/s Cuthberts Babywear Pvt.Ltd. approved as well as accounted for the payments in its books of account for the said year.

5. In the above circumstances, explanation offered by assessee was not accepted by ld. AO, Ld. AO as of opinion that assessee ought to have accounted for Rs.72,96,469/- in full in the year of accrual, and not on receipt basis. Accordingly, ld AO treated Rs.22,70,636/-(Rs.72,96,469/- minus Rs.50,23,833/-) income of assessee over and above income returned by him for the AY: 2007-08.

6. Ld. AO considered facts of case and explanation offered by assessee in connection with levy of penalty. In penalty proceedings ld. AO observed that there is concealment of income for the AY: 2007-08, as seen from records, and assessee has not declared contract receipts accurately in the return of income for the AY: 2007-08. He opined that assessee cannot postpone any contract receipts or income received or earned during a particular AY to subsequent AY. He was of opinion that explanation given by assessee was vague and hence not acceptable. As the assessee did not furnish any satisfactory explanation with regard to contract receipts, thus furnished inaccurate particulars and also concealed the particulars of income as per AO in penalty proceedings.

7. Ld. AO, accordingly levied hundred percent of penalty of income sought to be evaded.

8. Aggrieved, by order of Ld. AO, assessee preferred appeal before Ld.CIT (A), who upheld penalty so levied.

9. Aggrieved by order of Ld. CIT (A) assessee is in appeal before us now.

10. At the outset, Ld. AR submitted that issue stands squarely covered in favour of assessee by placing reliance

upon decision of *Hon'ble Karnataka High Court* in case of *CIT vs Manjunatha Cotton and Ginning Factory* reported in 359 ITR 555, which has been upheld by *Hon'ble Supreme Court*. She submitted that assessment order penalty has been initiated for furnishing of inaccurate particulars, whereas while passing penalty order Ld.AO levied penalty for both concealment, as well as furnishing inaccurate particulars. She submitted that, entire submission advanced by assessee was to satisfy that assessee has not any income, since notice u/s 274 did not specify any specific charge.

11. On the contrary Ld. Senior DR placed reliance upon orders passed by authorities below.

12. We have perused submissions advanced by both sides in the light of records placed before us.

13. As we perused order passed by Ld.CIT (A) we agree with proposition that merely by non-striking out the irrelevant limb, would not vitiate validity of notice issued under section 271 (1) (c) read with section 274 of the Act. However, it is necessary that Assessing Officer while levying penalty should specifically charge on the basis of its initiation, in assessment order. We do not agree with authorities below as initiation of penalty is on one limb (being furnishing of inaccurate particulars) whereas, levy of penalty is for both the charges. From submissions of assessee recorded by Ld.AO in penalty order it is observed that assessee replied to notice initiating penalty for charge of concealment of income. Decision of *Hon'ble*

*Karnataka High Court in case of CIT vs Manjunatha Cotton and Ginning (supra) observed in para 63 as under;*

- (a) *Penalty under Section 271(l)(c) is a civil liability.*
- (b) *Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.*
- (c) *Wilful concealment is not an essential ingredient for attracting civil liability.*
- (d) *Existence of conditions stipulated in Section 271(l)(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(l)(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(l)(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(l)(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.*

14. Afore stated observations, clause (r) very clearly specifies that if assessee is not aware of grounds which he has to meet specifically, principles of natural Justice is offended. In the present facts assessee is not at all aware about charge that he has to meet with and he replied for satisfying non-concealment of income whereas, in assessment order penalty was initiated for furnishing of inaccurate particulars which is very clear from assessment order. In penalty order, it is very clear that it is not a case of concealment. However it is also observed that addition has been made disputing, year in which income has accrued to assessee. Explanation offered by assessee was that in respect of contract work executed by assessee for M/s HM Constructions assessee had only accounted for Rs.92,6623/- as against that received amounting to Rs.1,44,320/- as per TDS certificate annexed to return of income filed for year under consideration. Assessee submitted that some expenses related to this contract was booked for assessment year 2008-09 and therefore the difference was observed. In respect of payments received from M/s Cuthberts textiles

India private limited, assessee had submitted that since it was an ongoing project bills were raised at various intervals as and when the portion of project was completed. Ld.AO did not accept the explanation so offered by assessee and rejected the same holding it to be vague and thus levied penalty for filing of inaccurate particulars and concealing particulars of income both. Ld. AO did not have any material to establish the explanation offered by assessee to be false or untrue.

15. On perusal of facts in entity we are of the considered opinion, that assessee was not aware of charge which he has to meet specifically. In our considered opinion, if submissions advanced by assessee are further analysed/verified in the context of records placed, there is no clear indication about any concealment of particulars of income nor there is any clear indication for furnishing of inaccurate particulars of income on application of mind. This amounts to breach of natural Justice, and therefore order levying penalty cannot be sustained.

16. Accordingly grounds raised by assessee stands allowed.

17. In the result appeal filed by assessee stands allowed.

Pronounced on the 28<sup>th</sup> June, 2019.

Sd/-  
**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**  
Dated: the 28<sup>th</sup> June, 2019.  
**\*am**

Sd/-  
**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order

Asst.Registrar

		Date	
1.	Dictated on		
2.	Draft placed before author		
3.	Draft proposed & placed before the second member		
4.	Draft discussed/approved by Second Member.		
5.	Approved Draft comes to the Sr.PS/PS		
6.	Kept for pronouncement on		
7.	File sent to the Bench Clerk		
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		
11.	Draft dictation sheets are attached		

