

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.1172 to 1178/Bang/2018
Assessment years : 2008-09 to 2014-15

Shri S Krishna Prasad, C-2, KSSIDC Industrial Estate, Sujatha Arms Mfg. Company, Bengaluru Road, Bellari-583 101. PAN – ADCPK 8481 E	Vs.	The Dy. Commissioner of Income-tax, Central Circle, Belgavi.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S Balachandra, Advocate
Respondent by	:	Shri R.N Siddappaji, Addl. CIT (DR)

Date of hearing	:	10.07.2019
Date of Pronouncement	:	01.10.2019

ORDER

Per B.R Baskaran, Accountant Member

All these appeals filed by the assessee are directed against the orders passed by Ld CIT(A), Gulbarga and they relate to the assessment years 2008-09 to 2014-15. The appeals relating to AY 2008-09 to 2012-13 are related to penalty levied u/s 271(1)(c) of the Act and the other two appeals relate to the penalty levied u/s 271AAB of the Act. Since the Ld CIT(A) has confirmed the penalty levied in all the above said years, the assessee has filed these appeals challenging the orders passed by Ld CIT(A).

2. The facts in brief are that the assessee is a partner in a firm named M/s Sujatha Arms manufacturing company. The revenue carried out search and seizure operations in the hands of the assessee on 18-09-2013. During the course of search, it was noticed that the assessee is carrying on money lending business and the income therefrom was not declared by the assessee in its return of income. It was also noticed that the assessee was also operating two bank accounts in the name of his children. When these materials were confronted, the assessee agreed to offer the credits found in the bank account & interest income in money lending business as his income in various years. The assessee also offered Rs.50.00 lakhs as his investment in money lending business. Though the assessee did not disclose the investment in money lending business in the return of income filed, yet he agreed for the addition of the above said amount in various years during the course of assessment proceedings. The AO also made certain small additions in various years and accordingly completed the assessment.

3. The AO also initiated penalty proceedings u/s 271(1)(c) of the Act for assessment years 2008-09 to 2012-13 and u/s 271AAB in AY 2013-14 and 2014-15. The AO levied penalty under the above said sections in all the years. The Ld CIT(A) also confirmed the penalties so levied.

4. We shall now take up the appeals pertaining to AY 2008-09 to 2012-13, wherein penalty u/s 271(1)(c) was levied. It is pertinent to note that the assessing officer in the assessment order as well as in

the penalty notice issued has stated that the penalty is levied “for concealment of particulars of income **and** for furnishing inaccurate particulars of income. Before Ld CIT(A), the assessee submitted that the penalty is leviable either for concealment of particulars of income or for furnishing inaccurate particulars of income, i.e., a penalty cannot be levied for both the charges on the same addition. Accordingly, it was contended that the AO was not clear about the charge and hence the penalty order is liable to be quashed. The said contention of the assessee did not find favour with Ld CIT(A), who rejected the same with the following observations: -

“.....Further, the appellant has raised the point that the AO has to specify in the notice itself that the penalty is leviable either on concealment or for furnishing inaccurate particulars. It is pointed out by the appellant that in the notice u/s 271(1)(c) of the Act the AO had not specified for which reason of the two, i.e., concealment or furnishing inaccurate particulars the penalty is proposed to be levied. In respect of this, I have gone through the copy of the notice u/s 271 dated 30-11-2015 which is the enclosure to the submissions of the appellant during appellate proceedings. In the notice the paragraph tick marked is **“** have concealed particulars of your income and furnished inaccurate particulars of such income.”** It is clear from the paragraph re-produced above which is part of the notice u/s 271 that it would have been vague if the word **“or”** is used in place of **“and”** to separate the words **‘concealed the particulars of your income’** and **‘furnished inaccurate particulars of such income’**. **Hence the argument of the**

appellant in respect of specification of “concealment” or “furnishing inaccurate particulars” of income with the support of decision of Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory is not tenable in these facts and circumstances. The first ground of appeal fails on this account. It was probably presumed that the word “or” existed between ‘concealed particulars of your income’ and ‘furnished inaccurate particulars of income’.

5. The Ld A.R submitted that the view so expressed by the Ld CIT(A) is not in accordance with the decisions rendered by Tribunals and Courts. He submitted that the two types of charges mentioned in sec. 271(1)(c), viz., “concealment of particulars of income’ and ‘furnishing of inaccurate particulars of income’ are two separate charges and hence the AO could not have initiated penalty proceedings on both the charges for the additions made. Accordingly he submitted that the AO was not clear about the charge for which penalty proceedings were initiated, meaning thereby, he has not applied his mind on the same. Accordingly he submitted that the penalty orders passed by him are liable to be quashed. He further submitted that the assessee has voluntarily surrendered income during the course of search proceedings and also agreed for further additions during the course of assessment proceedings. He submitted that the assessee has offered entire credits found in the bank accounts as his income, while he could have prayed for addition of only peak credit balances. He further submitted that the investments in money lending business has

been surrendered on estimated basis. He submitted that the assessee has fully co-operated with the AO in order to buy peace. Accordingly he submitted that, on merits also, the AO was not justified in levying penalty u/s 271(1)(c) of the Act.

6. The Ld A.R placed his reliance on the following case laws in support of his legal contentions mentioned above:-

(a) CIT vs. Manjunatha Cotton and Ginning Factory (359 ITR 565)(Kar)

(b) Smt. Jayalakshmi vs. ITO (ITA No.1056/Bang/2018 dated 30-04-2019)

(c) The DCIT vs. Shri R Elangovan (ITA No.1199/CHNY/2017 dated 05-04-2018).

7. The Ld D.R, on the contrary, submitted that the assessing officer has invoked penalty proceedings under both the limbs specified in sec.271(1)(c) of the Act. Referring to the decision rendered by Ld CIT(A) on this issue (which is extracted above), the Ld D.R submitted that the decision rendered by Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra) shall apply only if the word "or" is used in between both the charges. Since the AO has initiated penalty proceedings under both the limbs, he has used the word "and" in between both the charges. Accordingly he submitted that the AO's action cannot be found fault with and hence the Ld CIT(A) was justified in rejecting this contention of the assessee.

8. We heard the parties on this legal issue and perused the record. There is no dispute with regard to the fact that the assessing officer has initiated penalty proceedings under both the limbs of sec.271(1)(c) of the Act, viz., for concealing particulars of income and for furnishing inaccurate particulars of income. There should not be any dispute that both the charges mentioned in sec.271(1)(c) convey different meaning. It is so stated by Hon'ble Supreme Court in the case of T.Ashok Pai vs. CIT (292 ITR 11). Hence any addition made by the AO would fall under any one of the limbs specified in sec.271(1)(c) and not under both the limbs.

9. It is well settled proposition of law that the AO has to be clear about the charge under which he has initiated penalty proceedings. If there is lack of clarity on this aspect, then the penalty order is liable to be quashed, since it shall be considered as a case of initiation of penalty proceedings without application of mind. The following observations made by the Bangalore bench of ITAT in the case of Smt. Jayalakshmi (supra) support this legal position:-

“8. We heard rival submissions and perused the material on record. The only disputed issue prima facie is in respect of levy of penalty u/s 271(1)(c) of the Act. The contention of the learned AR is that the AO has passed the penalty order without application of mind and referred to page 39 & 40 of the paper book where notice u/s 274 r.w.s 271(1)(c) dated 31.12.2007 is enclosed. On perusal of the notice at page 40, as demonstrated by the learned AR, the AO has initiated penalty proceedings both for concealment of particulars of income and furnishing of inaccurate particulars of such

income. We are of the opinion that penalty proceedings are attracted only where the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is well accepted proposition that the aforesaid two limbs of section 271(1)(c) of the Act carry different meaning and the AO should be clear as to the limb under which penalty is being levied. When the AO proposes to invoke the first limb being concealment of income, notice has to be appropriately marked. But in the present case, as demonstrated before us, we found that the AO has marked the concealment of particulars of income and furnishing of inaccurate particulars of income. It is imperative and clear that the AO is not sure on which limb the penalty is being levied. Therefore, considering the facts and legal position and passing of penalty order u/s 271(1)(c), found that there is no application of mind by the AO as he has marked both limbs of notice which is bad in law. Accordingly, we set aside the order of the CIT(A) and cancel the penalty order dated 31.12.2007 and allow the grounds of appeal of the assessee.”

10. In the case of Manjunatha Cotton and Ginning Factory (supra), the Hon'ble Karnataka High Court, has, inter alia, observed as under:-

“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. Sending printed form where all the

grounds mentioned in section 271 are mentioned would not satisfy the requirement of law;

The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee; taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law; penalty proceedings are distinct from the assessment proceedings, though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings;

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 proceedings on the 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 invalid in the penalty proceedings.”

11. The foregoing decisions make it clear that the assessing officer should be clear in his mind when he initiates penalty proceedings u/s 271(1)(c) of the act about the charge for which he has initiated the penalty proceedings. We have noticed that the AO, in the instant cases, has initiated penalty proceedings under both the

limbs for the same additions. Hence there was lack of application of mind on the part of the AO. Accordingly, as held by Hon'ble jurisdictional High Court in the case of Manjunatha Cotton and Ginning Factory (supra), the principles of natural justice are offended and no penalty could be imposed on the assessee on the basis of the notices issued by the AO u/s 271(1)(c) of the Act.

12. Accordingly, we set aside the orders passed by Ld CIT(A) for assessment years 2008-09 to 2012-13 and direct the AO to delete the penalty levied u/s 271(1)(c) of the Act in the above said years.

13. We shall now take up appeals filed for AY 20013-14 and 2014-15, wherein penalty levied u/s 271AAB of the Act was confirmed by Ld CIT(A).

14. The Ld A.R submitted that the assessing officer has, in these two years, has mentioned in the assessment order that the penalty proceedings have been initiated u/s 271AAB of the Act. However, he has issued notices pertaining to provisions of sec.271(1)(c) and in the notices, he has

(a) tick marked the portion “have concealed the particulars of income and furnished inaccurate particulars of such income” and

(b) stated at the end of the notice as under:-

“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 271AAB.”

The Ld A.R submitted that the provisions of sec.271(1)(c) are not applicable to assessment years 2013-14 and 2014-15. However, the AO was not sure as to whether he has initiated penalty proceedings u/s 271(1)(c) or sec.271AAB, as is evident from the notice issued by him. He submitted that the penalty u/s 271AAB of the Act is leviable on “undisclosed income” and not for concealment of income. However, the AO has used the expression ‘concealment of income” in the assessment order and also tick marked “concealment of particulars of income and furnishing of inaccurate particulars of income” in the penalty notice. Accordingly, he submitted that there was no application of mind on the part of the AO and the same would vitiate the penalty proceedings as held by Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra). He further submitted that the Chennai bench of Tribunal has deleted penalty levied u/s 271AAB of the Act on identical circumstances in the case of The DCIT vs. Shri R Elangovan (ITA No.1199/Chny/2017 dated 05-04-2018). He further submitted that provisions of sec.271AAB prescribes three different types of penalty and in the case of Shri Suresh Chand Mittal vs. DCIT (ITA No.931/JP/2017 dated 02-07-2018), the Jaipur Bench of Tribunal has expressed the view that the AO should specify the nature of default mentioned in sec.271AAB in the notice itself. He submitted that the AO has not specified the nature of default in the notice issued by him for these two years.

15. The Ld D.R, on the contrary, submitted that the assessing officer has mentioned in the notice that the penalty shall be levied u/s 271AAB of the Act. He submitted that the assessee has also participated in the penalty proceedings and hence the defect, if any, pointed out by the assessee is cured by the provisions of sec.292BB of the Act. In this regard, the Ld D.R placed his reliance on the decision rendered by Hon'ble Allahabad High Court in the case of Pr. CIT vs. Shri Sandeep Chandak (Income tax Appeal No.122 of 2017 dated 27-11-2017). The Ld D.R also submitted that the Ld CIT(A) has followed the decision rendered by Kolkatta bench of Tribunal in the case of DCIT vs. Manoj Beswal (ITA No.1471/Kol/2015 dated 10-11-2017), wherein the penalty levied u/s 271AAB was confirmed. The Ld D.R also placed his reliance on the decision rendered by Hon'ble Delhi High Court in the case of Pr. CIT vs. Smt. Ritu Singhal (ITA 672/2016 dated 12-03-2018) rendered in the context of provisions of sec.271AAA of the Act. He submitted that the principles mentioned in the above said decision shall be applicable to the instant cases also.

16. In the rejoinder, the Ld A.R submitted that the decision rendered by Hon'ble Delhi High Court in the case of Ritu Singhal (supra) is not applicable, since the same has been rendered u/s 271AAA of the Act on the facts prevailing in the above said case, where as the penalty has been levied in AY 2013-14 and 2014-15 u/s 271AAB of the Act. Further, there is no dispute with regard to the manner in which the undisclosed income was derived by the assessee, while the same was absent in the case of Ritu Singhal which fact led the Hon'ble Delhi High Court to confirm the penalty

u/s 271AAA of the Act. He further submitted that the decision rendered by Kolkatta bench of Tribunal in the case of Manoj beswal was an ex-parte order and the same has been recalled by Kolkatta bench in the order passed in MA Nos.218 to 220/Kol/2017 dated 12.01.2018. He submitted that these facts have been mentioned in the order passed by Jaipur bench of Tribunal in the case of Suresh Chand Mittal (supra). He submitted that the Ld CIT(A) has also mentioned “ sec. 271(1)(c)”, besides sec.271AAB on the table available in the first page of order. Accordingly he submitted that the Ld CIT(A) was also not sure about the nature of penalty levied upon the assessee. Accordingly he submitted the orders passed by both the tax authorities are liable to be quashed.

17. We heard rival contentions on this issue and perused the record. There is no dispute with regard to the fact that the provisions of sec.271AAB is applicable to AY 2013-14 and 2014-15, since the “undisclosed income” has been assessed in both the years. Hence, by virtue of provisions of sec.271AAB(2), which read as under, the provisions of sec.271(1)(c) are not applicable in respect of “undisclosed income”:-

“(2) No penalty under the provisions of section 270A or clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1) or sub-section (1A).”

18. The provisions of sec. 271AAB(1) read as under:-

271AAB(1) The Assessing officer **may**, notwithstanding anything contained in any other provisions of this Act, direct

that, in a case where search has been initiated under section 132 on after 1st day of July, 2012 (but before the date on which the Taxation Laws (second amendment) Bill, 2016 receives the assent of the President), the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,--

- (a) A sum computed at the rate of **ten percent of the undisclosed income** of the specified previous year, if such assessee.....
- (b) A sum computed at the rate of **twenty per cent of undisclosed income** of the specified previous year, if such assessee.....
- (c) A sum which **shall not be less than thirty percent but which shall not exceed ninety percent of the undisclosed income** of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).....

19. A careful perusal of the provisions would show that the penalty u/s 271AAB is levied on the “undisclosed income” and the expression “undisclosed income” is defined in section 271AAB itself. As noticed earlier, the provisions of sec.271(1)(c) shall not apply if the provisions of sec.271AAB is applied. Under the provisions of sec.271(1)(c), penalty may be levied for either of two charges, viz., for “concealment of particulars of income” or for “furnishing inaccurate particulars of income”. Hence the expressions “undisclosed income” is different from the two charges mentioned in sec.271(1)(c) of the Act.

20. With this back ground, we shall now examine the facts available in the present cases. A perusal of assessment orders would show that the assessing officer has stated in the body of the assessment order that the “penalty proceedings u/s 271AAB are initiated for concealment”. At the end of the assessment order, he has stated that “Demand notice and Penalty notice u/s 271AAB issued accordingly”.

21. The penalty notice issued by the assessing officer for AY 2013-14 is extracted below: -

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NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF
INCOME TAX ACT, 1961

PAN -ADCPK8481E

Office of the
Deputy Commissioner of Income Tax,
Central Circle, Belagavi
Date : 30-11-2015

To

SHRI. KRISHNA PRASAD
C-2, KSSIDC INDUSTRIAL ESTATE
SUJATA ARMS MANUFACTURING CO.
BANGALORE ROAD,
BELLARY

Whereas in the course of proceedings before me for the assessment year 2013-14 it appears to me that you :-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act, 1961 No. _____ dated _____ or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act, 1961.

✎ *have concealed the particulars of your income and furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 12.30 PM on 23-12-2015 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 271AAB

Yours faithfully,

(JAYAKUMAR J.J)

Deputy Commissioner of Income-tax,
Central Circle, Belgaum.

Identical notice has been issued by the assessing officer for AY 2014-15 also.

22. A perusal of the above said penalty notice would show that the assessing officer has tick marked the following portion of the notice: -

“have concealed the particulars of your income and furnished inaccurate particulars of such income”

Admittedly, the above said portion shall apply only to the penalty proceeding initiated u/s 271(1)(c) of the Act. However, at the end of the notice, the AO has stated as under:-

“You are hereby requested to appear before me at 12.30 PM on 23.12.2015 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 271AAB.”

We notice that the assessing officer, by issuing the show cause notice, has asked the assessee to offer explanation as to why an order imposing penalty for “concealment of particulars of income and furnishing inaccurate particulars of income u/s 271AAB of the Act should not be passed. We have noticed earlier that the provisions of sec.271AAB refers to “undisclosed income” and penalty is also levied on “undisclosed income”. Hence reference to the charges related to sec. 271(1)(c) of the Act, viz., concealment of particulars of income or furnishing of inaccurate particulars of

income, in the notice is irrelevant and not applicable to sec.271AAB of the Act. Hence, we find merit in the contentions of the assessee that the AO was not clear about the charge for which he has initiated penalty proceedings.

23. We also notice that the Ld CIT(A) has also cited both the provisions in the first page of his order. In row 4, against the expression "Income assessed", the Ld CIT(A) has mentioned "Penalty u/s 271(1)(c). In Row 6, against the expression "Section under which order appealed against was passed", Ld CIT(A) has mentioned "Order u/s 271AAB of the I.T Act, 1961.

24. Thus, we notice that both the tax authorities are not clear about the charge for which the penalty was imposed. An identical issue was considered by the Chennai bench of Tribunal in the case of R. Elangovan (supra), wherein the Tribunal has observed as under:-

".... It is clear from the sub-section (3) of sec. 271AAB that section 274 and section 275 of the Act shall, so far as may be, apply. Sub-section (1) of section 274 of the Act mandates that order imposing penalty has to be imposed only after hearing the assessee or giving a assessee opportunity of hearing. Opportunity that is to be given to the assessee should be meaningful one and not a farce. Notice issued to the assessee reproduced (supra) does not show whether penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars of income or for having undisclosed income within the meaning of Section 271AAB of the Act. Notice in our opinion was vague. Hon'ble Karnataka High Court in the case of SSA's Emerald Meadows (supra) relying on its own judgment

in the case of Manjunatha Cotton and Ginning Factory (supra) had held as under:-

"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 [CIT 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".

In the earlier case of [Manjunatha Cotton and Ginning Factory](#) (supra) their lordship had observed as under:-

"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. Sending printed form where all the grounds mentioned in [section 271](#) are mentioned would not satisfy the requirement of law ;

The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee ; taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law ; penalty proceedings are distinct from the assessment proceedings : though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings ;

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 proceedings on the 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 invalid in the penalty proceedings".

View taken by the Hon'ble Karnataka High Court in the above judgment was indirectly affirmed by the Hon'ble Apex Court, when it dismissed an SLP filed by the Revenue against the judgment in the case of SSA's Emerald Meadows (supra), specifically observing that there was no merits in the petition filed by the Revenue. Considering the above cited judgments, we hold that the notice issued u/s.274 r.w.s. 271AAB of the Act, reproduced by us at para 5 above was not valid. Ex-consequenti, the penalty order is set aside."

25. In the instant cases also, it is not clear as to whether the penalty proceedings were initiated for concealment of income or for furnishing of inaccurate particulars of income or for having undisclosed income within the meaning of sec.271AAB of the Act. Hence the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra), in our view, shall apply in the instant cases also.

26. The Ld D.R placed his reliance on the decision rendered by Hon'ble Allahabad High Court in the case of Shri Sandeep Chandak (supra). The following observations made by Hon'ble High Court are relevant here:-

“We have gone through the contents of the penalty notice and we find that in the penalty notice, which has been issued under Section 274 read with section 271, the assessing authority has clearly indicated that the proceedings under Section 271AAB being initiated and the reply of the show cause notice in writing on or before the date so as indicated will be considered before any such order is made under Section 271AAB.”

The full contents of the notice are not available. A perusal of the above said observations would show that the AO, in the above said case, has mentioned in the notice that the penalty proceedings u/s 271AAB has been initiated. However, in the instant case, the AO is asking the assessee to furnish explanations on “concealment of income and furnishing of inaccurate particulars of income”. The AO has mentioned section 271AAB in the last sentence of notice, but the charge specified is not “undisclosed income” relevant to sec.271AAB of the Act. Accordingly we are of the view that the facts prevailing in the instant cases is different and accordingly the revenue cannot take support from the decision rendered by Hon'ble Allahabad High Court. The decision rendered by Hon'ble Delhi High Court in the case of Smt. Ritu Singhal(supra) is on different issue and in any case, it is related to the penalty levied u/s 271AAA of the Act.

27. In view of the foregoing discussions, we are of the view that the penalty notice issued u/s 271AAB of the Act to the assessee for AY 2013-14 and 2014-15 cannot be sustained and accordingly the

penalty orders passed for the above said years are liable to be quashed. We order accordingly.

28. Since we have quashed the penalty orders on the above discussed legal grounds, there is no necessity to adjudicate other grounds urged by the assessee.

29. In the result, all the appeals of the assessee are treated as allowed.

Order pronounced in the Open Court on **1st October, 2019.**

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 1st October, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
15. Dictation note enclosed