

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI ARUN KUMAR GARODIA, AM  
AND  
SHRI PAVAN KUMAR GADALE, JM**

<b>ITA No. 1546/Bang/2019</b>
<b>Assessment Year : 2012 – 13</b>

Shri Avijit Dewanjee, M/s max Motors, No. 2/6, Dr. Raj Kumar Road, Rajajinagar, Bangalore – 560010. <b>PAN: AAVPD5129R</b>	vs.	ITO, Ward – 2 (2) (2), Bangalore
APPELLANT		RESPONDENT
Assessee by	:	Smt. Suman Lunkar, C. A.
Revenue by	:	Shri Sunil Kumar Agarwal, Addl. CIT DR
Date of Hearing	:	28.11.2019
Date of Pronouncement	:	29.01.2020

**ORDER**

**PER SHRI A.K. GARODIA, AM:**

This appeal is filed by the assessee and it is directed against the order of CIT(A) – 2 Bengaluru dated 08.05.2019 for A. Y. 2012 – 13.

2. In this appeal, although four grounds are raised by the assessee but the grievance is only one about penalty of Rs. 255,830/- imposed by the AO u/s 271 (1) (c) of I. T. Act.

3. In course of hearing, learned AR of the assessee submitted that the penalty order is bad in law because the notice issued by the AO u/s 274 r.w.s. 271 of I. T. Act is available on page 33 of the Appeal memo and as per the same, no specific allegation is made as to whether the charge is about concealment of income or furnishing of inaccurate particulars of income. Reliance was placed on the Judgment of Hon’ble Karnataka High Court rendered in the case of CIT vs. Manjunath Cotton & Ginning Factory, 359 ITR 565. Learned DR of the revenue supported the orders of the lower authorities. He placed reliance on

the tribunal order rendered in the case of Shri P. M. Abdulla vs. ITO in ITA No. 1223 & 1224/ Bang/2012 dated 17.10.2016 and he filed a copy of this tribunal order.

4. We have considered the rival submissions. We find that the Judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Manjunath Cotton & Ginning Factory (Supra) is squarely applicable in the present case because learned DR of the revenue could not point out any difference in facts. We find that in the notice issued by the AO under section 274, the AO is alleging that the assessee has concealed the particulars of his income or has furnished inaccurate particulars of such income. Hence it is seen that the allegation is vague. Para 63 of this judgment is relevant because it contains the conclusion and hence, we reproduce it as under:-

**“CONCLUSION**

**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) &**

**(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(I)(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.**

**1) 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.**

5. Clause p) of this Para reproduced above specifically states that Notice u/s 274 of I T 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 inaccurate particulars of income and clause q) specifically states that Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law. Clause r) specifically states that 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. Therefore, respectfully following this judgment, we delete the penalty u/s 271(1) (c).

6. Before parting, we examine the applicability of tribunal order rendered in the case of Shri P. M. Abdulla vs. ITO (Supra) cited by the learned DR of the revenue. We find that in Para 9 of this tribunal order, this is noted by the tribunal that the column relevant to concealment of particulars of income had been ticked by the AO in that case but in the present case, there is no such ticking by the AO in the notice available on record and therefore, this tribunal order is not applicable in the present case.

7. In the result, the appeal of the assessee is allowed.

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

Sd/-

(PAVAN KUMAR GADALE)

Judicial Member

Bangalore,

Dated, the 29<sup>th</sup> January, 2020.

/NS/<sub>AKG</sub>

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

Sd/-

(ARUN KUMAR GARODIA)

Accountant Member

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.