IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN "SMC" BENCH, COCHIN

Before Shri Chandra Poojari, AM

ITA No.564/Coch/2019 : Asst.Year 2000-2001
ITA No.565/Coch/2019 : Asst.Year 2001-2002
ITA No.566/Coch/2019 : Asst.Year 2002-2003
ITA No.567/Coch/2019 : Asst.Year 2003-2004
ITA No.568/Coch/2019 : Asst.Year 2004-2005

The Income Tax Officer Ward 3 Kollam.	Vs.	Sri.A.Shihabudeen, Fozy Shopping Complex Kadakkal Kollam – 691 536 **PAN : AGSPP7003N.**
(Appellant)		(Respondent)

Appellant by : Sri.Mrithunjaya Sharma, Sr.DR
Respondent by : Sri.S.Rajagopal, CA

Date of Hearing : 10.02.2020		**Date of Pronouncement : 10.02.2020**

O R D E R

These five appeals filed by the Revenue are directed against different orders of the CIT(A), Thiruvananthapuram, all dated 02.08.2019 for the assessment years 2000-2001 to 2004-2005, which are emanated from the orders of the levy of penalty passed by the Assessing Officer u/s 271(1)(c) of the I.T.Act.

2. The facts of the case in brief are that the assessee is a non-resident has constructed a seven storied shopping complex at Kadakkal. There was a survey u./s 133A / 133B of the I.T.Act, at Kadakkal shopping complex of the assessee on 06.04.2005. Based on the information gathered on the survey, the Department came to the notice that the assessee

had constructed the said shopping complex. Further information also received that the assessee is in receipt of rental income and purchased property at Anchel and purchased a Benz car. The Assessing Officer noticed that the assessee has not filed any return of income voluntarily. Therefore, based on the information, the A.O. has reason to believe that income chargeable to tax has escaped assessment. This resulted in 143(3) r.w.s. 147 assessment. During the course of assessment proceeding, the said building in question was referred to the Valuation Cell of the Income-tax Department for the purpose of determining the cost of construction. The District Valuation Officer (DVO) valued the said building at Rs.2,00,27,000. Total investment on the building including the electrical work, lift, generator, transformer, etc. was determined at Rs.2,37,47,450. The cost of construction admitted by the assessee is Rs.2,17,90,906 including the cost of electrical work. The difference in the cost of construction on the building which came to Rs.24,87,474 was treated as unexplained investment and spread over the assessment years 2000-2001 to 2004-2005. The CIT(A) confirmed the addition. The assessee carried the matter in appeals before the Tribunal. The Tribunal sustained the addition to the extent of 50% of the total addition of Rs.24,87,474, which worked out to Rs.12,39,747 for the assessment years 2000-2001 to 2004-2005. Consequently, the Assessing Officer passed penalty order levying penalty for all the assessment years under consideration, as under:-

Asst.Year	Amount (Rs.)
2000-2001	53,300
2001-2002	56,700
2002-2003	49,400
2003-2004	50,810
2004-2005	65,800

3. Against this, the assessee carried the appeal before the CIT(A) challenging the above levy of penalty, raising following grounds:-

> *"(a) The Assessing Officer has erred in levying a concealment penalty u/s 271(1)(c) of the I.T.Act in the facts and circumstances of the case.*
>
> *(b) The Assessing Officer ought to have found that the non-filing of the explanation was due to the absence of the Appellant from India and not on account of any deliberate or willful act.*
>
> *(c) The Assessing Officer should have found that the addition on account of unexplained investment in construction of shopping complex has been made on an estimate basis relying on the District Valuation Officer's report and the addition was substantially reduced by the ITAT in second appeal. Such being the case the Appellant should not have been held to be guilty of concealment.*
>
> *(d) The Assessing Officer should have found that there is no concealment of income in the facts and circumstances of the case. The alleged concealed income is nothing but the estimated addition sustained by the ITAT on account of unexplained investment in the cost of construction.*
>
> *(e) The penalty is bad in law."*

4. The CIT(A) placed reliance of the order of the ITAT Cochin Bench in the case of Babu Mathew [2018 TaxPub 6676], and deleted the penalty, by observing as under:-

> *"4.4 Here, the question is whether non-striking off the irrelevant limb of the notice issued under section 274 of the Act is fatal to the penalty order passed under section 271(1)(c) of the Act by the Assessing Officer. A similar issue was considered by Hon'ble ITAT, Cochin in the case of Babu Mathew, 2028 TaxPub 6676, and it was held as under:-*
>
> > *"10. We have heard the rival submissions and perused the material on record. We have given a careful consideration to the rival submissions. The argument of the learned counsel for the assessee was that the show cause notice under section 274 of the Act which is in a printed form and the assessing officer has indicated in the said notice as to whether the penalty is sought to be levied on the assessee for "furnishing inaccurate particulars of income" or "concealing particulars of such income" by striking off the irrelevant portion of the printed show cause notice. On this aspect we find that in the show cause notice under section 274 of the Act the assessing officer has not struck out the irrelevant part. It is not spelt out as to whether the penalty proceedings are sought to be levied for "furnishing inaccurate particulars of income" or "concealing particulars of such income".*
> >
> > *11. The Hon'ble Karnataka High Court in the case of CIT & Anr. v. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar.) : 2014 TaxPub (DT) 0202 (Karn-HC), has held that notice under section 274 of the Act should specifically state as to whether penalty is being proposed to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of income. The Hon'ble High Court has further laid down that certain printed form where all the grounds given in section 271 are given would not satisfy the requirement of law. The Court has also held that initiating penalty proceedings on one limb and finding the assessee guilty in another limb is bad in law. It was submitted that in the present case, the aforesaid decision will squarely apply and the orders*

imposing penalty have to be held as bad in law and liable to be quashed.

13. It is clear from the aforesaid decision that on the facts of the present case that the show cause notice under section 274 of the Act is defective as it does not spell out the grounds on which the penalty is sought to be imposed. Following the decision of the Hon'ble Karnataka High Court, we hold that the orders imposing penalty in all the assessment years have to be held as invalid and consequently penalty imposed is cancelled.

14. We may also add that the provisions of section 292B of the Act cannot cure the basic defect in assumption of jurisdiction and only cure the mistake, defect or omission in return of income, assessment, notice or the proceedings is in substance and effect in conformity with or according to intent and purpose of the Act. As we have already seen that the Hon'ble Karnataka High Court in the decision referred to earlier view the show cause notice and the reasons mentioned in the show cause notice are part of the process of the natural justice and the defect in such notice cannot be overlooked. In view of the aforesaid decision we do not find any infirmity in the arguments advanced by the learned AR before us."

4.5 In view of the decision of Hon'ble jurisdictional Tribunal, it is evident that the notice issued under section 274 r.w.s. 271(1)(c) of the Act without striking off the irrelevant limb is invalid and consequently, penalty order passed by the Assessing Officer is also invalid. Hence, following the decision of jurisdictional Tribunal, the penalty of Rs.53,300 levied under section 271(1)(c) of the Act is deleted and the legal ground raised by the Appellant is allowed. As the legal ground is allowed, the grounds raised on merits are not discussed."

5. The CIT(A) observed that the penalty order passed by the Assessing Officer without striking out the irrelevant portion of the show cause notice u/s 274 of the I.T.Act, is invalid and therefore, the penalty imposed is not sustainable. Against

this, the Revenue is in appeal before the Tribunal, raising following grounds:-

1. The Learned Commissioner of Income tax (Appeals), Trivandrum erred in deleting the penalty levied u/s 271(1)(c) of the Act on the ground that the notice issued ii]» 274 r w s 27,1(1)(c) without striking off the irrelevant limb is invalid and consequently penalty order passed by the Assessing Officer is invalid.

2. Whether on the facts and in the circumstances of the case the CIT(A) is correct in deleting the penalty without considering the fact that the assessee did not even object the defect in the notice before the Assessing Officer, at the time of penalty proceedings, by which it is clear that it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued u/s 274 r w s 271.

3. The CIT(A) ought to have noticed that the assessment order dated 26.09.2007 for A Y 2000-01 u/s 143(3) r w s 147, the Assessing officer clearly mentioned "penalty proceedings u/s 271(1)(c) is initiated for concealment of income".

4. The CIT(A) ought to have noticed that the addition on account of unexplained investment made by the assessee on construction of building was confirmed by the ITAT and hence the same was nothing but undisclosed income and therefore the question of specifying the default by the AO did not arise as it was very well known to the assessee that it was concealment of particulars of income.

5. Whether on the facts and circumstances of the case, the CIT(A) is correct in not considering the following case laws:
(i) [2018] 93 taxmann.com 250 (Madras) in the case of M/s Sundaram Finance Ltd which was confirmed

by the Apex court in [2018] 99 taxmann.com 152 (SC).

(ii) [2019] 109 taxmann.com 175 (Delhi Trib) in the ITAT, Delhi Bench-G in the case of Vijay Aggarwal Vs DCIT, Central Circle-1, Faridabad.

6. For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income tax (Appeals), Thiruvananthapuram on the above points may be set aside and that of the Assessing Officer restored."

6. The learned Departmental Representative submitted that the only issue involved is whether levy of penalty u/s.271(1)(c) is valid in law keeping in view the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (359 ITR 565-Kar). The contention of the assessee is that since the Assessing Officer had not struck off the irrelevant portion in the show cause notice, it goes to prove that the Assessing Officer had not reached satisfaction before initiating proceedings u/s.271(1)(c). According to the AR, the contention that the relevant column has not been ticked, cannot be accepted as it is found from A.O. and penalty orders for all the years, the concealment of income has been mentioned by the Assessing Officer. In any event, it is found that the assessee had offered an explanation for concealment of particulars of income only. The assessee, at no stage of penalty proceedings and at no stage had complained of violation of the principles of natural justice. Thus, no prejudice is caused on account of any omission or commission in the show cause issued. The provisions of Section 292B clearly lay down that :-

> Return of income, etc, not to be invalid on certain grounds:
>
> 292B:-No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

6.1 The learned DR further submitted that the Hon'ble Karnataka High Court had neither considered nor brought to the notice of the Hon'ble High Court, provisions of Section 292B of the Act. Even assuming that there is a defect in the show cause notice issued, as canvassed by the learned Counsel for assessee that will vitiate the entire penalty proceedings, the judgment was rendered by the Hon'ble High Court in the case of Manjunatha Cotton & Ginning Factory (supra) without considering the provisions of Section 292B. Subsequently, the Hon'ble Karnataka High Court in the case of CIT vs. Sri Durga Enterprises (2014) 44 taxmann.com 442 (Kar) while dealing with the validity of notice u/s.148 of the Act as valid and responded to it in letter and spirit and participated in the proceedings and in light of the provisions of Section 292B, notice issued u/s.148 was held to be valid. The relevant paragraph of judgment is extracted below:-

> "9. In the present case, as observed earlier, the assessee not only responded to the notice under Section 148 of the Act within one month, but on the basis of the return filed earlier, participated in

the proceedings till the matter reached the FAA and was disposed of. A glance at Section 292B of the Act, shows that under this provision, certain Acts are not to be treated as invalid, may be by reason of any mistake, defect or omissions, either in return of income, assessment, notice, summons or other proceedings. In other words, a notice cannot be invalidated by reason of any mistake, such as the one occurred in the present case, namely, the period of filing return of income was not specified as contemplated by Section 148 of the Act. If such a defect is not allowed to be cured, or treated as invalid so as to declare the notice invalid, despite the fact that assessee had taken that notice as valid and responded to it in letter and spirit and participated in the proceedings, the very purpose/objective of the provisions contained in Section 292B of the Act would stand frustrated/defeated. The intent of the Legislature is clear from the language employed in this provision which states that a defective notice, such as the one in the present case, cannot be declared invalid by reason of any mistake, defect or omission, if the notice in `substance' and in `effect' is in conformity with or according to the intent of purpose of this Act. The intent or purpose of issuing the notice is to call upon the assessee to file return, if the Assessing Officer finds that income has escaped the assessment. This being the intent and purpose of the provisions contained in Section 148 of the Act, in our opinion, it stands satisfied if the notice is responded within reasonable time, which in the present case was 30 days, irrespective of the fact whether the period was specified or not in the notice for filing return of income. In the present case, if the assessee had not responded to this notice at all and had raised such ground of challenge, perhaps, he would not succeed. But having responded and participated in the proceedings, he cannot be allowed to turn around and raise objection for the first time before the Tribunal seeking invalidation of the proceedings initiated by issuing notice under Section 148 of the Act. In the circumstance, we allow this appeal answering both the substantial questions of law in favour of the Revenue and against the assessee. In view of the peculiar facts and circumstances of the case, there shall be no order as to costs.

Thus, having regard to the ratio laid down by the Hon’ble Jurisdictional High Court in the subsequent decision in the case

> of Sri Durga Enterprise (supra) we hold that show cause notice issued u/s.274 r.w.s 271(1) (c) cannot be held to be invalid."

6.2 The learned DR also relied on the order of the ITAT Delhi Benches in the case of Trimurti Engineering Works v. ITO in ITA No.3889/Del/2011 – order dated 04.04.2012, and also the judgment of the Hon'ble Supreme Court in SLP in the case of *Sundaram Finance Ltd. v. DCIT [(2018) 99 taxmann.com 152 (SC)]*.

6.3 The learned DR therefore, submitted that the CIT(A) ought not have deleted the penalty based on the decision of Manjunatha Cotton and Ginning Factory (supra) and remand back the matter to the CIT(A) for adjudication of the appeals on merits.

6.4 The learned DR further submitted that the Circular No.3/2018 dated dated 11.07.2018 issued by the Central Board of Direct Taxes, cannot be applied to the facts of the present case in view of para 10(d) of the said Circular, which reads as under:-

> *"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:-*
>
> *(a) to (c) ……..*
>
> *(d) where the addition relates to undisclosed foreign assets /bank accounts."*

7. On the other hand, the learned AR submitted that this issue is squarely covered by the earlier order of the Cochin Bench of the Tribunal in the case of DCIT v. M/s.R.R. Holidays Homes (P) Ltd. in ITA No.513/Coch/2019 – order dated 08.11.2019, wherein the Tribunal held that penalty proceedings initiated by the Assessing Officer is void ab initio in view of the non-striking of the irrelevant portion of the notice issued by the A.O. u/s 274 r.w.s. 271(1)(c) of the I.T.Act, since it cannot be known whether the penalty was levied for concealment of income or furnishing of inaccurate particulars of income. The learned AR also relied on the judgment of the Hon'ble Karnataka High Court in the case of CIT & Anr. v. SSA's Emerald Meadows (2015) (11) TMI 1620 and also the judgment of the Hon'ble Supreme Court in SLP in the case of CIT & Anr. v. SSA's Emerald Meadows reported in (2016) (8) TMI 1145.

7.1 The learned AR further submitted that clause 10(d) of CBDT Circular No.3/2018 dated 11th July, 2018, cannot be applied in the present case since in the present case, the penalty levied towards unexplained investment in construction of a building and the addition is nowhere related to any item mentioned in clause 10(d) of the Circular cited above.

8. I have heard the rival submissions and perused the material on record. In the present case, the CIT(A) deleted the penalty on the reason that the A.O. has not struck out the

irrelevant portion of the penalty notice issued u/s 274 r.w.s. 271(1)(c) of the Act. It cannot be known whether the penalty levied for concealment of income or furnishing of inaccurate particulars of income. The argument of the learned DR is that the reading of penalty order together with assessment order makes it clear that the penalty was levied for concealment of income. I have carefully gone through the notice u/s 274 of the Act. For clarity we reproduce copy of one of the notices issued for assessment year 2000-2001, as under:-

INCOME TAX DEPARTMENT
Office of the Additional Commissioner of Income-tax
Kollam Range, Kollam

Notice u/s 274 read with section 271(1)(c) of the Income-tax Act, 1961

Date : 03/10/2007
PAN-AGSPP7003N/Wd-3/KLM

Sri.A.Shihabudeen
Fouzy Shopping Complex
Kadakkal, Kollam.

Where as in the course of proceedings before me for the Assessment year 2000-01 it appears to me that you:-

- have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are requested to appear before me at 10:30 AM on 05/11/2007 and show cause why an order imposing 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 my such order is made under section 271.

Sd/-
(K.DEVARAJAN)
Income tax Officer, Ward-3, Kollam.

8.1 As seen from the above notice, the A.O. has not struck out the irrelevant portion in the above notice. It is not clear whether he has levied the penalty for concealment of particulars of income or furnishing of inaccurate particulars of income. I have also gone through the penalty order para 4, which reads as under:-

> *"4. On The basis of the above information, there was reason to believe that income chargeable to tax had escaped assessment within the meaning of Sec.147 of the I.T.Act, 1961. Notice under section 148 was, therefore, issued on 2.3.2007 and served on 6.3.2007. As there was no response to this notice, another notice u/s 142(1) and a pre assessment notice dated 9.7.2007 were issued posting the case for hearing on 24.7.2007. These were served on 10.7.2007. By letter dt. 24.7.07, Sri T.S.Suresh Kumar, ITP has requested for one month's time for filing the return on the ground that the assessee is expected to be in India by 5th August, 2007. Return of income was ultimately filed on 31.8.07 declaring total income at Rs.Nil. This return was posted for evidence on 24.09.2007 by notice u/s 143(2) dated 10.9.2007."*

8.2 By reading of the penalty order also, it is not clear that whether he has levied the penalty for concealment of income or furnishing inaccurate particulars of income. Hence, in my opinion, the ratio laid down by the ITAT Cochin Bench in the case of M/s.R.R. Holidays Homes (P) Ltd. (supra) clearly applies, wherein the Tribunal held as under:-

"6. We have heard the rival submissions and perused the record. The main contention of the ld. DR is that penalty was levied by the Assessing Officer for concealment of particulars of income and furnishing inaccurate particulars of such income. We have gone through the assessment order dated 27/12/2016. As seen from the assessment order, it was mentioned in last para that penalty u/s. 271(1)(c) would be initiated separately for furnishing inaccurate particulars of income. In the penalty order dated 29/06/2017, in the last para of page 2 of it, the Assessing Officer mentioned as follows:

> *"Considering all of the above and based on the facts of the case, it is clear that the assessee had concealed the particulars of income till the survey was carried out and had failed to furnish return voluntarily. Only after the survey was conducted by the department, assessee has furnished the return of income."*

6.1 However, contrary to this, the Assessing Officer has mentioned in last but one para in page 3 of the penalty order as follows:

> *"Accordingly, a penalty of Rs.2,20,48,706/- is imposed u/s. 271(1)(c) of the I.T. Act, 1961 for furnishing inaccurate particulars of income and concealing its true and correct taxable income."*

6.2 Hence, in our opinion, it cannot be said that the penalty was levied for furnishing inaccurate particulars of income and concealment of income. When the penalty is levied for one of the offence, it is incumbent upon the Assessing Officer to struck down the irrelevant portion of the notice issued u/s 274 of the Act. We have gone through the contents of the notice issued u/s. 274 of the Act. As held by the Karnataka High Court in the case of CIT & Anr. vs. M/s. SSA's Emerald Meadows (2015) (11) TMI 1620 that the notice issued by the Assessing Officer u/s. 274 r.w.s 271(1)(c) is 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. This view was confirmed by the Supreme Court in the same case, i.e., CIT & Anr. vs. M/s. SSA's Emerald Meadows reported in (2016) (8) TMI 1145.

6.3 In view of the above discussion, we are inclined to hold that the penalty proceedings initiated by the AO is void ab initio and allow the appeal of the assessee. Hence, we do not find any

infirmity in the order of the CIT(A) and confirm the same. Since we have quashed the penalty proceedings itself, we refrain from adjudicating the other grounds of appeal raised by the assessee."

8.3 In view of this, I am inclined to confirm the deletion of penalty by the CIT(A) in all the assessment years. Further, I also make it clear that the CBDT Circular No.3/2018 clearly applies to the present case of the assessee. There is no merit in the argument of the learned DR that the assessee is not covered by the CBDT Circular in view of para 10(d) of the above Circular. In my opinion, in the present case, the penalty was levied by the Assessing Officer on account of unexplained investments in construction of building, on receipt of valuation report from the DVO and further the addition is not related to any items mentioned in para 10(d). Being so, the department is precluded from filing the appeal in view of the monetary limit of filing the appeal before the Tribunal is Rs.50 lakh, as prescribed by the CBDT.

8.4 Further even on merit, the learned DR submitted that the issue may be remitted to the CIT(A) to be decided afresh on merits. In my opinion, even on merit also the issue is covered in favour of the assessee by the judgment of Hon'ble Madras High Court in the case of CIT v. Apsara Talkies [(1985) 155 ITR 303 (Mad.)]

"4. We agree with the reasoning and conclusion of the Tribunal. The whole basis for rejecting the assessee's return was the Departmental Valuer's estimate of the cost of construction of the theatre. We, however, fail to see how a finding of concealment of income can be founded on a valuer's estimate. It is jocularly said that a valuer is one who, if you have forgotten your telephone number, will estimate it for you. The truth behind this utterance is that a valuation is, even in the

most expert hands, an inexact instrument of measurement. It is only an estimate and no two valuers will agree on the same subject. In this very case, there were as many as three different valuation reports. One was by an executive engineer of the Public Works Department. His estimate of the theatre was at Rs. 2,64,557. There was another estimate by an approved valuer which put the cost at Rs. 3,10,541. As earlier mentioned, the Departmental Valuer put the figure at Rs. 5,67,300. As if these were not enough, the ITO himself put his valuation at Rs.5,55,580. In this welter of estimates, there is no scope whatever for drawing the inference that the assessee's book figure of cost at Rs. 4,41,280 was not only an understatement but it involved an actual concealment of income.

5. There is no evidence in this case to show that the assessee had understated the construction expenses in its accounts. The only basis for the addition in the assessment as well as for the levy of penalty is that furnished by the Department Valuer's estimated figure. We are satisfied that a valuation estimate, without more, cannot justify a finding of concealment.

6. The Department had obtained from the Tribunal a reference on two questions of law. The first question is as follows :

"Whether, on the facts and in the circumstances of the case, and having regard to the Appellate Tribunal's finding in the quantum appeal, the Appellate Tribunal was right in cancelling the entire penalty of Rs. 1,01,000 levied under section 271(1)(c) ?"

7. For the reasons we have stated above, our answer to this question of law is in the affirmative and against the Department.

8. The Department had also obtained another question from the Tribunal which is in the following term :

"Whether the Tribunal had any material to hold that the assessee had a plausible explanation for the disparity between the cost of construction shown by it and the cost of construction estimated by the estate duty valuer in the context of its reference to the decision in CIT v. Mohammed Kunhi [1973] 87 ITR 198 ?"

9. The question is somewhat unusually framed with a citation of case law in it, CIT v. Mohammed Kunhi [1973] 87 ITR 189 is a decision by the Kerala High Court. It contains a clear ruling that a penalty cannot be levied on the basis merely of an estimate of cost of construction of a building built by an assessee with his funds. In the case before that High Court, an addition was made to the income returned on the score that the cost of construction as disclosed in the assessee's books was lower than the estimated cost of the building as rendered by a valuer. The learned judges held that a mere estimate of cost cannot constitute

material on which a finding of concealment can be rendered. In that case, some explanation had been offered by the assessee as to why the construction was at an economical cost. This explanation was not accepted by the ITO. The learned judges held that even if the assessee's explanation was not acceptable, it would still require some further material to support the finding that the assessee had concealed its taxable income. We respectfully agree with this view.

10. Our answer to the second question is, accordingly, in the affirmative and in favour of the assessee."

8.5 Being so, there is no useful purpose would be served in remitting the appeals to the files of the CIT(A). In the totality of the facts and circumstances of the case, I am inclined to confirm the order of the CIT(A) in deleting the penalty for all the assessment years.

9. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced on this 10th day of February, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin ; Dated : 10th February, 2020.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Thiruvananthapuram.
4. The Pr.CIT, Thiruvananthapuram.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin