

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI A.K.GARODIA, ACCOUNTANT MEMBER

Sl. No.	ITA No.	A.Y.	APPELLANT	V.	RESPONDENT(S)
1. 2. 3. 4. 5.	1866/B/2018 1867/B/2018 1868/B/2018 959/B/2018 2527/B/2018	2008-09 2010-11 2012-12 2009-10 2011-12	Shri K. Ramaswamy. # 2930/1, K-23, Near St. Marry's Convent Circle, JLB Road, Mysuru – 570004 PAN:ADGPR5117A		The Assistant Commissioner of Income Tax, Circle – 2(1), Mysuru - 570008
6. 7. 8.	966/B/2018 1869/B/2018 1870/B/2018	2007-08 2010-11 2011-12	Shri. Ajith. R. # 567, 'Ashwini', 1 st Cross, Maruthi Temple Road, Kuvempunagara, Mysuru -570023. PAN:AGPPR0788R		The Assistant Commissioner of Income Tax, Circle – 1(1), Mysuru - 570008

Appellant by	:	Shri Tatakrishna, Advocate.
Respondent by	:	Shri Manjeeth Singh, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	04.02.2020
Date of Pronouncement	:	12.02.2020

ORDER

Per Bench

ITA Nos.966, 1869 & 1870/Bang/2018 are appeals by the assessee against the orders dated 28.9.2017, 28.2.2018 & 28.02.2018 respectively of the CIT(Appeals), Mysuru relating to assessment years 2007-08, 2010-11 & 2011-12 whereby the CIT(Appeals) confirmed the order of AO imposing penalty u/s. 271(1)(c) of the Act.

2. The assessee in the above appeals is Mr.R.Ajith. He is assessed in the status of an individual. He is engaged in real estate business. There was a survey u/s. 133A of the Income-tax Act, 1961 [the Act] conducted in the case of assessee's father Mr.K.Ramaswamy. The survey was conducted on 22.7.2013. The assessee had not filed return of income in the aforesaid 3 assessment years and therefore notice u/s. 148 was issued to the assessee on 19.3.2014 for AY 2007-08, 23.9.2013 for AY 2010-11 & 23.9.2013 for AY 2011-12. In AY 2007-08 the income declared in the return was accepted, but in AY 2010-11 & 2011-12, a sum of Rs.10,000 which was claimed as expenses was disallowed by the AO for want of vouchers. Since the assessee had filed return of income only pursuant to the survey, and thereafter by issue of notice u/s. 148 of the Act, penalty proceedings were initiated against the assessee and penalty was imposed on the assessee u/s. 271(1)(c) of the Act by the AO. The order of AO was confirmed by the CIT(Appeals).

3. Aggrieved by the orders of the CIT(A), the Assessee is in appeal before the Tribunal. In the appeal or AY 2007-08 in ground No.7, and for AY 2010-11 & 2011-12 in ground No.9, the Assessee has raised the issue that the show cause notice u/s. 274 of the Act before imposing penalty did not specify as to whether the penalty is being initiated for concealing particulars or for furnishing inaccurate particulars of income. Copy of the said show cause notice has been filed before us and is placed at pages 126 to 128 of the paper book. He pointed out that the show cause notice does not strike out the irrelevant portion viz., "furnished inaccurate particulars of income" or "concealed particulars of such income". He drew our attention to a decision of the Hon'ble Karnataka High Court in the case of *CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 218 Taxman 423 (Kar.)* wherein it was held that if the show cause notice u/s.274 of the Act does not specify as to the exact charge viz., whether the charge is that the

Assessee has “furnished inaccurate particulars of income” or “concealed particulars of income” by striking out the irrelevant portion of printed show cause notice, than the imposition of penalty on the basis of such invalid show cause notice cannot be sustained.

4. We have also perused the show-cause notice issued u/s.274 of the Act for all the aforesaid AYs 2007-08, 2010-11 & 2011-12. The AO in the said show cause notice has not struck off the irrelevant portion as to whether the charge against the Assessee is “concealing particulars of income or furnishing of inaccurate particulars of income”.

5. The learned DR relied on the order of the CIT(A). He placed reliance on the decision of the Hon’ble ITAT Bangalore Bench in the case of Shri P.M. Abdulla Vs. ITO ITA No.1223 & 1224/Bang/2012 order dated 17.10.2016 taking a view that absence of specific mention in the show cause notice u/s.274 of the Act about the charge u/s.271(1)(c) of the Act is not fatal to levy of penalty u/s.271(1)(c) of the Act. In coming to the aforesaid conclusion the Bench followed decision of Hon’ble Karnataka High Court in the case of CIT Vs. Sri Durga Enterprises (2014) Taxmann.com 442 (Karnataka). A Co-ordinate bench in the case of *Shri A Nagaraju (ITA No.2196/Bang/2016 dated 6/4/2018)*, has considered the decision cited by the learned DR in the case of *P.M. Abdullah (supra)* and has held that the same is contrary to the decision of Hon’ble Karnataka High Court in the case of *Manjunatha Cotton & Spinning Mills Ltd., (supra)* and therefore cannot be followed. The decision rendered in the case of Sri Durga Enterprises (supra) was in a totally different context of defect in notice issued u/s.148 of the Act wherein the AY was not mentioned and period within which the return was to be filed was not mentioned. The defect was held to be curable u/s.292B of the Act. The same reasoning cannot be applied in the context of show cause notice u/s.274 of the Act.

6. Similarly the reliance by the learned DR on the decision of Hon’ble

Supreme Court in the case of *Skylight Hospitality LLP Vs. ACIT (2018) 92 taxmann.com 93(SC)* is also misplaced as it was a decision rendered in the context of Sec.148 of the Act wherein the name of the erstwhile company which got converted into an LLP was mentioned. The defect was held to be curable and falling within the mischief of Sec.292B of the Act. This decision rendered in the context of Sec.148 of the Act in our view is not relevant in the present case.

6. The Hon'ble Karnataka High Court in the case of *CIT & Anr. v. Manjunatha Cotton and Ginning Factory, 359 ITR 565 (Karn)* has held that notice u/s. 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 find the Assessee guilty on another limb of Sec.271(1)(c) of the Act. The Hon'ble Karnataka High Court in the case of *CIT & Anr. v. Manjunatha Cotton and Ginning Factory (supra)* has laid down the following principles to be followed in the matter of imposing penalty u/s.271(1)(c) of the Act.

“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 Gujarat 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.”

8. The final conclusion of the Hon'ble Court was as follows:-

“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(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(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."

(emphasis supplied)

7. 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. The Hon'ble Karnataka High Court in the case of *CIT vs. SSA's Emerald Meadows in ITA No.380 of 2015 dated 23.11.2015* wherein the Hon'ble Karnataka High Court following its own decision in the case of *CIT vs Manjunatha Cotton and Ginning factory (2013) 359 ITR 565* took a view that imposing of penalty u/s 271(1)(c) of the Act is bad in law and invalid for the reason that the show cause notice u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The Id. Counsel further brought to our notice that as against the decision of the

Hon'ble Karnataka High Court the revenue preferred an appeal in *SLP in CC No.11485 of 2016* and the Hon'ble Supreme Court by its order dated 05.08.2016 dismissed the SLP preferred by the department.

8. We have already observed that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. The plea of the Id. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We therefore hold that imposition of penalty in the present cases cannot be sustained and the same is directed to be cancelled.

ITA Nos. 959, 1867 & 1868/Bang/2018

9. These are appeals against the separate order of CIT(Appeals), Mysuru dated 28.9.2017 for AY 2009-10, dated 28.2.2018 for AY 2010-11 & 28.8.2018 for AY 2012-13, by the assessee, Shri K. Ramaswamy, father of Shri Ajith R. – assessee in ITA Nos. 966, 1869 & 1870/B/2018. In these cases also, penalty u/s. 271(1)(c) of the Act was initiated and levied on the assessee for the reason that but for the survey, assessee would not have filed return of income. The CIT(Appeals) confirmed the order of AO.

10. In all these appeals, assessee has raised ground No.7, which reads as follows:-

“7. As regards the Learned Assessing Officer having not recorded satisfaction before initiating penalty proceedings:

7.1. The Learned Assessing Officer is not justified in levying penalty without recording his satisfaction in the re-assessment order before initiating penalty proceedings.

- 7.2. The Learned Assessing Officer has failed to appreciate that the provisions of Section 271(1B) do not apply for the reason that the re-assessment order does not contain any direction for initiation of penalty proceedings.
- 7.3. The Learned Assessing Officer has failed to appreciate that the expression 'penalty proceedings initiated u/s 271(1)(c), 271B separately' stated in the re-assessment order, cannot be regarded as 'direction for initiation of penalty proceedings'.
- 7.4. Without prejudice to the above, the expression "penalty proceedings initiated' u/s 271(1)(c), 271B separately' stated in the re-assessment order does not name the exact nature of alleged offence, i.e. concealment or furnishing of inaccurate particulars."

11. The Id. counsel for the assessee brought to our notice that in the order of assessment concluded u/s. 143(3) r.w.s. 148 of the Act, the AO has merely observed in all the 3 assessment orders as follows:-

"Penalty proceedings u/s. 271(1)(c), 271B, separately".

He submitted that such initiation of penalty proceedings in the order of assessment does not reflect proper recording of satisfaction for initiating penalty proceedings and in this regard drew our attention to a decision of the Hon'ble High Court of Karnataka in the case of *CIT V. MWP Ltd. [2014] 41 taxmann.com 496 (Kar)*. In this decision, on identical facts, the Hon'ble High Court of Karnataka took a view that there is no recording of proper satisfaction, if in the assessment order the observations are only for initiating penalty proceedings u/s. 271(1)(c) of the Act. The Hon'ble High Court also considered the effect of provisions of section 271B of the Act, which provide that a mere observation in the order of assessment that penalty proceedings are initiated separately would be sufficient recording of satisfaction. The Hon'ble High Court dealt with this argument as follows:-

"10. Section 271(1)(c) of the Act, was the subject matter of interpretation by this Court in the case of *CIT v. Manjunatha*

Cotton & Ginning Factory [2013] 218 Taxman 423/35 taxmann.com 250 (Kar.). Interpreting the deeming provisions it has been held as under:

'48. As the opening words of Explanation 1 makes it clear where in respect of any facts material to the computation of the total income of any person under this Act such person fails to offer an explanation or offers an explanation which is found to be false or offers an explanation which is not able to substantiate and fails to prove that such explanation is bona fide, then the amount added or disallowed in computing the total income of such person as a result thereof shall for the purposes of clause (c) of this sub-section be deemed to represent the income in respect of which particulars have been concealed. Therefore, it is clear that aforesaid instances by itself do not constitute concealment. The Assessing Officers were just writing at the end of the assessment order that penalty proceedings are initiated or something to the effect. The Delhi High Court in the case of Ram Commercials has held that such a note alone in the assessment order does not satisfy the requirement of assuming jurisdiction in law in respect of the initiation of penalty proceedings. The satisfaction should be in the assessment order. The said view was also approved by the full Bench of the Delhi High Court in the case of CIT v. Rampur Engg. [2009] 309 ITR 143. The said view has been approved by the Apex Court in the case of Dilip N. Shroff v. Jt. CIT [2007] 291 ITR 519. That is the view the courts have consistently taken. After taking note of the judicial pronouncements in this regard, the Legislature thought it fit to insert Section 271(1)(B), which reads as under:

"271(1)(B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (c)."

49. By the aforesaid deeming provision a legal fiction is created. When the assessment order contains a direction for initiation of penalty proceedings such order shall deem to constitute satisfaction of the Assessing Officer for initiation of penalty proceedings under sub-clause (c) of Section 271 of the Act. As the language of Section 271 makes it clear before a direction is issued to pay penalty, the person issuing the direction must be satisfied about the condition mentioned in clause (c) of Section 271(1). The question is, whether such satisfaction should be in writing. As the satisfaction has to be in the course of any proceedings and it is at the time of computation of the total income of any person and as it results in an assessment order which has to be mandatorily in writing, the satisfaction should be found in the said order. The existence of these facts is a condition precedent for initiation of penalty proceedings under Section 271. This provision is attracted once in any such assessment orders, a direction for initiation of penalty proceedings under clause (c) of sub-section (1) is made. Thereby, it means even if the order does not contain a specific finding that the assessee has concealed income or he is deemed to have concealed income because of the existence of facts which are set out in Explanation 1, if a mere direction to initiate penalty proceedings under clause (c) of sub-section (1) is found in the said order, by legal fiction, it shall be deemed to constitute satisfaction of the Assessing Officer for initiation of penalty proceedings under said clause (c). The said provision came up for interpretation by the Delhi High Court in the case of Ms. Madhushree Gupta v. Union of India [2009] 309 ITR 143, wherein the Delhi High Court held that the satisfaction should be discernable in the assessment order. Position post amendment is not in much variance with pre-amendment. They held that provisions will fall foul of Article 14 of the Constitution if the same is not read in the manner it has read and in fact has read down the provisions to hold it Constitutional. Therefore according to Delhi High Court, in post amendment and pre amendment there is not much difference and the satisfaction is required to arrived in the course of assessment proceedings and should be discernable in the assessment order. Therefore, this provision makes it abundantly clear that satisfaction of the Assessing Officer before initiation of penalty proceedings is a must. The satisfaction should be that he has concealed particulars of his income or furnished inaccurate particular of such income and even in the absence of those expressed words or findings recorded in the Assessment proceedings, if a

direction as aforesaid is mentioned, it constitutes satisfaction of the Assessing Officer.

DIRECTION

50. A reading of Section clearly indicates that the assessment order should contain a direction for initiation of penalty proceedings. The meaning of the word direction is of importance. Merely saying that penalty proceedings are being initiated will not satisfy the requirement. The direction to initiate proceedings should be clear and not be ambiguous. It is well settled law that fiscal statutes are to be construed strictly and more so the deeming provisions by way of legal fiction are to be construed more strictly. They have to be interpreted only for the said issue for which it has deemed and the manner in which the deeming has been contemplated to be restricted in the manner sought to be deemed. As the words used in the legal fiction or the deeming provisions of Section 271(1B) is Direction, it is imperative that the assessment order contains a direction. Use of the phrases like (a) penalty proceedings are being initiated separately and (b) penalty proceedings under Section 271(1)(c) are initiated separately, do not comply with the meaning of the word direction as contemplated even in the amended provisions of law. The direction should be clear and without any ambiguity. The word 'direction' has been interpreted by the decision of the Apex Court in the case of Rajinder Nath v. CIT [1979] 120 ITR 14 where it has been held that in any event whatever else it may amount to, on its very terms the observation that the ITO is free to take action, to assess the excess in the hand of the co-owners cannot be described as a direction. A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and discretion of the ITO whether or not take action, it cannot be described as a direction.

51. Therefore, it is settled law that in the absence of the existence of these conditions in the assessment order penalty proceedings could not be proceeded with. The proceedings which are 'initiated contrary to the said legal position are liable to be set aside'

11. In the instant case in the assessment order what has been said regarding diminution in the value of investment is as under:

"1. Provisions for diminution in the value of investment: The assessee has claimed an amount of Rs. 4,40,00,000/- under this head. This has been claimed as a revenue expenditure and included in the loss of Rs. 4,44,84,483/- shown under the head business or profession. On enquiry it is intimated by the company that there is a diminution in the value of investment on account of the Asian Age South Ltd., It was further stated in the letter dated 2-9-2003, that according to the company it forms a part of the loss of the company. The assessee was requested to furnish factual and legal justification of the claim. In reply vide ltr. dt. 31-10-03, the procedure of valuation as per accounting standard No. 13 was explained, however in the last para it was stated that the company is of the view that under the provisions of the IT. Act, the said claim is not allowable. The company was again requested to intimate whether the claim is being withdrawn. Vide letter dt. 10-11-03, it is stated that the claim is being withdrawn. In view of this the claim of Rs. 4,40,00,000/- is not considered for computation and claim disallowed."

Thereafter, in the end, it is stated as under:

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

12. A reading of the aforesaid order makes it clear that Assessing Authority was not satisfied that there is any concealment of the intent. Further there is no direction for initiation of penalty proceedings could be gathered from the said order also. It is held in the aforesaid judgment that (a) phrases like penalty proceedings are being initiated separately (b) penalty proceedings under Section 271(1)(c) are initiated separated don not comply with the meaning of the word direction as contemplated even in the amended provisions of law. The direction should be clear and without any ambiguity. The word 'direction' has been interpreted by the decision of the Apex Court in the case of Rajinder Nath v. CIT [1979] 120 ITR 14/2 Taxman 204, where it has been held that in any event whatever else it may amount to, on its very terms the observation that the ITO is free to take action, to assess the excess in the hand of the co-owners cannot be described as a direction. A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the

option and discretion of the ITO whether or not take action, it cannot be described as a direction.

13. In the absence of such a direction, the deeming provision is not attracted. Therefore the conditions prescribed under Section 271(1)(c) of the Act, is not attracted. Therefore the Tribunal was justified in setting aside the order passed by the Assessing Authority as well as the Appellate Authority, imposing penalty. No merits. Dismissed. The substantial question of law is answered in favour of the assessee and against the Revenue.”

12. He also brought to our notice identical decisions rendered by the Hon'ble High Court of Karnataka in the case of *CIT v. Chandrasekaran, 230 Taxman 658 (Karnataka)* and *Safina Hotels P. Ltd. v CIT, [2016] 66 taxmann.com 334 (Kar)*.

13. The Id. DR relied on the order of AO.

14. After considering the rival submissions, we are of the view that penalty imposed in the present cases has to be cancelled for the reason that the AO has not recorded proper satisfaction in the order of assessment for initiating penalty u/s. 271(1)(c) of the Act. In the decisions cited by the Id. counsel for the assessee on identical facts as in the case of assessee in the present appeals, the Hon'ble High Court of Karnataka took the view that there has been no recording of satisfaction for initiating penalty u/s. 271(1)(c) and on that ground the penalty imposed was cancelled. In view of the aforesaid decisions of the Hon'ble High Court of Karnataka, we are of the view that the penalty imposed in the present cases deserves to be annulled. Accordingly, the penalties are cancelled and the appeals of the assessee are allowed.

ITA No.1866/B/18 & 2527/Bang/2018

15. ITA 1866/B/18 is an appeal the assessee against the order dated 28.2.2018 of the CIT(Appeals), Mysore relating to AY 2008-09. ITA

2527/B/2018 is an appeal against the order dated 13.7.2018 of the CIT(Appeals), Mysore, relating to AY 2011-12. These appeals are by the Assessee, Mr. K. Ramaswamy. In these appeals also, the facts are identical, the penalty proceedings u/s. 271(1)(c) were initiated for the reason that but for the survey, the assessee would not have filed return of income. The assessee has raised ground No.8 challenging the action of the AO in not specifying the specific charge against the assessee in the show cause notice issued u/s. 274 of the Act. Copy of the show cause notice for AY 2008-09 at page 157 of the PB and for the AY 2011-12 at page 128 of paper book. The same has been perused and it is found that the show cause notice does not specify the charge against the assessee as to whether it is for furnishing inaccurate particulars or concealing particulars of income. We are of the view that in light of the decision of the Hon'ble High Court of Karnataka in the case of *Manjunatha Cotton and ginning Mills Ltd. (supra)* the imposition of penalty is liable to be cancelled on the ground that the show cause notice u/s.274 of the Act for imposing penalty does not spell out the specific charge. The penalty imposed is directed to be cancelled.

16. In the result, both the appeals by the assessee are allowed.

17. In the combined result, all the appeals of the assesses are allowed.

Pronounced in the open court on this 12th day of February, 2020.

Sd/-

(A.K.GARODIA)
ACCOUNTANT MEMBER

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 12th February, 2020.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.