**IN THE INCOME TAX APPELLATE TRIBUNAL**
**BANGALORE BENCHES "B" , BANGALORE**

**Before Shri Chandra Poojari, AM & Smt.Beena Pillai, JM**

ITA No.1950/Bang/2017 : Asst.Year 2012-2013

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| Sri.Kasimali M.Sayyad<br>C/o. A Raghavendra Rao &<br>Associates, Vakil Chawl<br>GADAG – 582 101<br>**PAN : AONPS4913H.** | Vs. | The Income Tax Officer<br>Ward – 1, Gadag. |
| (Appellant) | | (Respondent) |

Appellant by : Sri.R.Chandrasekhar , Advocate
Respondent by : Smt.Swapna Das, JCIT-DR

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| **Date of Hearing : 28.01.2020** | | **Date of Pronouncement : 18.02.2020** |

**O R D E R**

**Per Chandra Poojari, AM :**

This appeal filed by the assessee is directed against the penalty order of the CIT(A) passed u/s 271(1)(c) of the Act, dated 05.06.2017. The relevant assessment year is 2012-2013.

2. The assessee has raised the following grounds:-

*"1. The order passed by the Assessing Officer is illegal, baseless and opposed to the facts of the case. The learned Income Tax Officer has not clearly specified as to for which reason he has initiated penalty proceedings u/s 271(1)(c) of the Income tax Act.*

*2. There is not concealment of any income. There are no additions to the income declared. The income offered was declared only to co-operate with the department and to buy peace. The Department has not found concealment of any income.*

*3. The assessee prays leave to add any more grounds of appeal before or at the time of hearing."*

2. Briefly stated the facts of the case are that a survey u/s. 133A of the Income Tax Act,1961, was conducted in the business premises of the assessee at Gadag and Koppal on 19.02.·2013. During the course of survey it was found that the assessee along with his wife was constructing a new lodge building which was almost on completion stage. On the basis of books found and impounded it was found that the actual investment made in the construction of lodge building was worked out at Rs.2,41,20,000. On the other hand the explained sources of investment in Lodge building was to the tune of Rs.1,49,81,000. Thus there was unexplained investment in construction of lodge building to the tune of Rs.74,86,000. The assessee along with her spouse Sri.Kasim Ali Sayed declared the excess investment in construction of lodge building as under:-

| Sl. No. | Name | A.Y.2012-13 (Rs.) | A.Y.2013-14 (Rs.) | Total (Rs.) |
|---|---|---|---|---|
| 1. | Sri.Kasim Ali Sayed | 31,95,627 | 5,47,373 | 37,43,000 |
| 2. | Smt.Simran Sayed | 31,95,627 | 5,47,373 | 37,43,000 |

2.1 Further, during the course of survey proceedings, the assessee has also offered additional income of Rs.16,04,803. It was noticed that the assessee has entered into two joint development agreements to develop land. The receipts from the same were not disclosed to the Department. On account of this a sum of Rs.16,04,803 was offered for taxation. An amount of Rs.2,50,000 was also offered for taxation during the course of survey on account of unexplained expenditure.

The income was offered on account of amount spent on conversion of agricultural land to non-agricultural land. The assessment u/s.143(3) rws 147 was completed in this case on 30.3.2015 assessing total income of Rs.57,52,252-. Penalty proceedings u/s 271(1)(c) of the Act for concealing the particulars of income were initiated. As there was change of incumbent, an opportunity of being heard was afforded to the assessee by issue of notice u/s.129 dated 10/9/2015 positing the case on 14/912015. There was no response of the assessee to the said notice. As there was further change of incumbent, notice u/s.129 dated 24.9.2015 was issued to the assessee posting the case on 29.9.2015. For this notice also there was no response from the assessee. Not responding to the notices issued shows that the assessee has nothing to say in the matter. In this case survey u/s.133A has taken place on 19/2/2013. The income was offered for taxation during the course of survey. The assessee was to immediately pay the taxes and revise the return of income, which the assessee has failed. As the assessee failed to revise the return of income, Notice u/s.148 was issued to the assessee calling for the return of income. The Notice u/s.148. was issued on 29/812013. The assessee has filed the revised return of income on 29/3/2014. Further, the assessee has failed to file the revised return of income by making payment despite declaration made during the course of survey. The revised return came to be filed only after the issue of notice u/s.148 by the department, declaring income of Rs.57,52,252/- (Including the additional income declared during survey) as

against income declared in original return of income of Rs.7,01,820. It is therefore evident that assessee has concealed the particulars of income for A.Y.2012.13. The Revised Return was filed only because of the notice u/s.148 issued by the department, he could have filed his revised return of income enhancing the amount of survey declaration. Therefore it is clear that the assessee has not offered his additional income in his original return of income, neither he has availed the chance to make it revise u/s 139(4) of the I.T.Act. The A.O., thus noted that it is therefore clear that the intention of the assessee is to avoid the taxes on additional income detected during the survey. The additional income so taxed is just because of survey operation and not in any way by voluntary declaration / offer of such income and it is clear that the assessee has concealed the particulars of income and has filed inaccurate particulars of income while filing. Accordingly, the A.O. concluded that the assessee has concealed the particulars of income, liable for penalty and thus he levied penalty of Rs.16,01,000 u/s 271(1)(c) of the Act. In first appeal, the CIT(A) confirmed the penalty order passed by the Assessing Officer. Against this, the assessee is in appeal before the Tribunal.

3. Before me, the learned AR argued that the A.O. has not strike down the irrelevant portion of notice issued u/s 274 of the I.T.Act and accordingly, it is not clear whether the Assessing Officer has levied penalty for concealment of income or furnishing of inaccurate particulars of income. As

such the learned AR submitted that similar issue was considered by the Hon'ble High Court in the following cases and based on that the penalty order should be quashed.

(i) CIT v. Manjunatha Cotton and Ginning factory (2013) 359 ITR 565 (Ker.)
(ii) CIT v. SSA's Emerald Meadows 2016 (8) TMI 1145 (SC).

4. The learned Departmental Representative, on the other hand, submitted that this issue is covered against the assessee by the order of the co-ordinate Bench in the case of Shri P.M.Abdulla v. ITO [ITA Nos.1223 & 1224/Bang/2012 – order dated 17.10.2016], wherein the Tribunal held as under:-

*"9. We heard rival submissions and perused material on record. 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 jurisdictional High Court in the case of Manjunatha Cotton & Ginning Factory (supra). The contention of the assessee is that since the AO has not ticked off the relevant column in the show cause notice, it goes to prove that the AO had not reached satisfaction before initiating proceedings u/s 271(1)(c). The contention of the learned counsel for assessee that the relevant column has not been ticked, cannot be accepted as it is found from material placed before us that for both the years, the column relevant to concealment of particulars of income has been ticked by the AO. In any event, it is found that the assessee has offered an explanation for concealment of particulars of income only. The AO, considering the explanation, had levied penalty. The assessee, at no stage of penalty proceedings, has raised this issue. The assessee had participated in the 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 proceedings, 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 proceedings is in substance and effect in conformity with or according to the intent and purpose of this Act."*

*The Hon'ble jurisdictional 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 & Ginnning Factory (supra) without considering the provisions of section 292E Subsequently, the Hon'ble jurisdictional High Court in the case of CIT vs. Sri Durga Enterprise (2014) 44 taxmann.com 442 (Kar) while dealing with the validity of notice u/s 148 r.w.s 292B held that where assessee has taken the notice u/s 148 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 (sic). 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.*

*10. Now, adverting to the merits of the case for levy of penalty, the only explanation offered by the assessee in support of the outstanding balance shown in the books of account is that outstanding balances have subsequently been paid but the assessee neither submitted payment details nor rebutted the information obtained by the AO under the provisions of section 133(6) of the Act from the sundry creditors who had flatly denied having any transactions with the assessee. This remains uncontroverted and in our considered opinion, it amounts to concealment of income and the AO was right in levying penalty u/s 271(1)(c) of the Act."*

4.1 The learned DR also relied on the order of the ITAT Bangalore Bench in the case of M/s.Jaysons Infrastructure India P. Ltd. v. ITO (ITA No.997/Bang/2015 – order dated 09.06.2017), wherein the Tribunal held as under:-

*07. We have heard the contentions of the Ld. DR and perused the orders of the lower authorities. In our view, u/s.271(1)(c) of the Act, the AO is required to satisfy that an assessee has concealed the*

*particulars of income and after reaching a satisfaction the AO may direct the said person / assessee to pay by way of penalty, a sum equivalent to the tax sought to be evaded or three times the tax sought to be evaded, As mentioned herein above, the AO while passing the assessment order has to satisfy that inaccurate particulars of income has been furnished by the assessee in the return of income. From a perusal of the order, it is clear that the assessee has sought the exemption of income u/s.80IA of the Act, on the pretext that the assessee is an eligible undertaking within the meaning of Section 80IA. However, it is only during the course' of a survey when a statement of the Director of the company was recorded, it came to light that the assessee was not entitled for the benefit of Section 80IA of the Act. Even otherwise, the assessee has not furnished the details of any infrastructure project constructed or maintained by it during the year under consideration. Thus it is clear that the assessee has deliberately furnished the inaccurate particulars of income and thereby sought to avail the beneficial provisions of Section 80IA. The assessee was aware that it was not entitled and therefore this fact was accepted by the assessee during the course of survey. In view thereof, when the assessee has furnished inaccurate particulars of income in the return of income arid claimed the benefit u/s.80IA and has filed nil return of income, the case of the assessee clearly falls within the purview of Section 271 (1)( c) of the Act. Even otherwise, in our view, once the assessment order clearly mentioned that the "assessee has furnisher inaccurate particulars of income", mere mentioning in the notice "for concealing the particulars of income" or "furnished inaccurate particular of income" would not cause any prejudice to the assessee, The assessee was already having the benefit of going through the assessment order wherein it is clearly mentioned that "the penalty proceedings are initiate for filing inaccurate particulars of income". There is no ambiguity in the impugned order of the AO for initiating the penalty*

*proceedings against the assessee. Moreover, if the Assessee is of the view that there is some ambiguity, the said ambiguity can be sorted out by participating in the penalty proceedings and taking objection to the fact before AO. The assessee has not taken any objection before the AO in the penalty proceedings and for the first time, the said objection has been taken before CIT(A). In our view, the purpose of issuing the notice is to inform the assessee about the charges under which the assessee is liable for imposition of penalty. Once the charges are clearly known to the assessee which are duly mentioned in the assessment order as well as in the notice, there is no error in the notice issued by the AO for imposition of penalty. In view thereof also, we do not find any merit in the appeal. As a result, penalty proceedings are confirmed."*

5. We have heard the rival submissions and perused the material on record. The only dispute in this appeal is that the notice issued u/s 274, the Assessing Officer has not struck down the irrelevant portion in the said notice and hence it was not clear whether the Assessing Officer has levied penalty for concealment of income or furnishing of inaccurate particulars of such income. The argument of the learned counsel for the Assessee was that the show cause notice u/s.274 of the Act which is in a printed form and the AO 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 u/s.274 of the Act the AO 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".

5.1 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 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. 12. 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 farm 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."

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

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. 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."

5.2 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. Further, the Hon'ble Karnataka High Court in the case of CIT v. SSA's Emerald Meadows in ITA No.380 of 2015 dated 23.11.2015, it was held that imposing penalty u/s 271(1)(c) of the Act is bad in law and invalid for the reason that the show cause notice issued u/s 274 of the I.T.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. As against this decision of the Hon'ble Karnataka High Court, the Revenue has preferred an appeal in SLP in CC No.11485 of 2016 and the Hon'ble Supreme Court by order dated 05.08.2016 dismissed the SLP preferred by the Department. These judgments were followed by the co-ordinate Bench in the case DCIT v. Shri C.S.Prasad in ITA No.359/Bang/2018 – order dated 15.02.2019. Following the decision of the Hon'ble Karnataka High Court, we hold that the orders imposing penalty in that assessment year has to be held as invalid and consequently penalty imposed is cancelled.

5.3 We may also add that the provision 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 proceeding 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. The contention of the Ld. DR is that the assessee has participated in the penalty proceedings and hence the error, if any that has occurred would be cured in view of the provisions of sec. 292B/292BB of the Act. Opposing the said contention, reliance was placed on the decision rendered by the Bangalore Bench of the Tribunal in the case of Shri K. Prakash Shetty vs. ACIT (ITA Nos. 265 to 267/Bang/2014 dt. 05/06/2014) wherein it was held that the provisions of sec.292BB would not come to the rescue of the revenue, when the notice was not in substance and effect in conformity with or according to the intent and purpose of the Act. In our view, the notice issued by the Assessing Officer was not in substance, and effect in conformity with or according to the intent and purpose of the Act, since the Assessing Officer did not specify the charge for which penalty proceedings were initiated and further there was non-application of mind on the part of the Assessing Officer.

5.4 For the reasons given above, we hold that levy of penalty

in the present case cannot be sustained. We therefore cancel the orders imposing penalty on the Assessee and allow the appeals by the Assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 18th day of February, 2020.

| Sd/- | Sd/- |
|---|---|
| **(Smt.Beena Pillai)** | **(Chandra Poojari)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Bangalore ; Dated : 18th February, 2020.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-1, Hubli.
4. The Pr.CIT, Hubli.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore