

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **263 & 264/CHNY/2017**

निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12

Shri Sheikh Kutbuddin Habib,
No.124, Ranga Konar Street,
Mubarak Complex, 3rd Floor,
Coimbatore - 641 009.

The ACIT,
v. Circle -II,
Coimbatore.

PAN: BWUPS 6818K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri K. Raghu, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri G. Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing

: 28.07.2021

घोषणा की तारीख/Date of Pronouncement

: 18.08.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

These two appeals filed by the assessee are directed against orders of learned Commissioner of Income Tax (Appeals)-2, Coimbatore, both dated 31.10.2016 and pertains to assessment years 2010-11 & 2011-12. Since, facts are identical and issues are common, for the sake of convenience these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both assessment years and therefore, for the sake of brevity, grounds of appeal filed for assessment year 2010-11 are reproduced as under:-

“1. The order of the learner CIT(A)-2, Coimbatore, confirming the levy of penalty u/s.271(1)(c) of the I.T.Act, 1961, to the extent of Rs.27,95,078/- for the Asst.Year 2010-11, is opposed to law and unsustainable in the facts and the circumstances of the case.

2. The learned CIT(A) ought to have held that in the facts and the circumstances of the case and in law, the levy of penalty u/s 271(1)(c) is unsustainable and therefore, deleted the penalty levied by the learned AO.

3. The learned CIT(A) has grossly erred in not deleting the penalty levied u/s 271(1)(c), as the AO did not have jurisdiction to levy the penalty, in the facts of the case of the appellant.

4. For these and other additional grounds of appeal that may be adduced at the time of hearing, the order of the CIT(A)-1, Coimbatore, is opposed to law and unsustainable in the facts and the circumstances of the case.”

3. The brief facts of the case are that the assessee is an individual engaged in real estate business, was not filing his income tax returns regularly. The Investigation Wing of Income-Tax Department conducted enquiry on the basis of suspicious transaction report generated by the system about huge investments made by the assessee in real estate

business. During the course of investigation, it was noticed that the assessee has made huge investments in real estate during the previous year relevant to assessment year 2010-11 and in the earlier years, however, not filed any return of income for the year under consideration and for earlier years. During the course of investigation, a statement was recorded from the assessee and took a deposition, as per which the assessee has admitted that investment to the tune of Rs.3,35,50,000/- was not disclosed to the Department. Based on the information, the assessment has been reopened u/s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') by issuing notice u/s.148 of the Act. In compliance thereon, the assessee has filed his return of income for both assessment years admitting total income of Rs.93,65,560/- and Rs.56,73,910/- respectively. Thereafter, assessment was completed u/s.143(3) r.w.s. 147 of the Act by accepting income returned without making any further addition.

4. The AO, simultaneously has issued notice u/s.274 r.w.s. 271(1)(c) of the Act, for levying penalty for concealment of income or furnishing inaccurate particulars of income. In reply,

the assessee submitted that he has neither concealed, nor furnished inaccurate particulars of his income in the return of income filed pursuant to notice u/s.148 of the Act and hence, the question of levy of penalty u/s.271(1)(c) of the Act does not arise, when there is no addition to returned income. The AO, however was not convinced with the explanation furnished by the assessee and according to him, had enquiry u/s.131(1A) of the Act was not carried out in the case of the assessee, it was not come to the notice of the Department, the undisclosed income for the relevant assessment years and hence, he opined that even though, the assessee has admitted income in the return of income filed u/s.148 of the Act and further, no addition was made to returned income in assessment proceedings, but the return itself amounts to concealed income because, the assessee has not filed his regular return of income on or before the due dates specified u/s.139(1) / 139(4) of the Act. The relevant findings of the AO are as under:-

“3. The submissions given by the assessee has been given due consideration. During the course of enquiry u/s.131(1A) of the Act carried out in the case of the assessee, it was found that Shri Sheikh Kutubuddin H Habib had not filed any return of income so far. The

assessee's mode of business was to purchase a few cents of lands in and around Dr.Nanjappa Road, Coimbatore and then construct commercial complex and sell the same to prospective buyers. In addition to this, the assessee speculated in shares and commodities. He has not maintained any books of accounts in respect of any of his business. On the basis of the depositions made by him and documents submitted by him during the course of enquiry, it is seen that the investments to the tune of Rs.3,35,50,000/- were not disclosed to the department. It was also found out that the assessee was maintaining 8 bank accounts in four different banks and these accounts had a total credit of Rs.15.9 crores and a debit of Rs.15.8 crores. The assessee had also undertook 33 numbers of immovable property transaction from the year 2005 in his own capacity and also as a power agent.

4. The assessee's explanation that he has not concealed or furnished inaccurate particulars is not acceptable as the assessee had not file any return of income so far and has not disclosed his details of investment to the department. It was only found out by the department due to an enquiry conducted u/s.131(1A) of the Act based on a Suspicious Transaction Report that the assessee has made huge investments in the immovable property. Failure of the assessee to give credible explanation regarding not disclosing the transactions in immovable property to the department without filing return of income would clearly lead to the inference that the assessee had concealed his income within the meaning of section 271(1)(c) of the Income Tax Act, 1961.

5. In view of the above discussion, I am satisfied that the assessee has willfully concealed his income to the extent of Rs.93,65,560/-. Hence, I propose to levy minimum penalty of 100% of the tax sought to be evaded. Accordingly, a sum of Rs.27,95,078/- which is equivalent to 100% of the tax payable is levied as penalty on the assessee."

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the

assessee challenged penalty levied by the AO u/s.271(1)(c) of the Act on two grounds. The assessee has first challenged levy of penalty on the ground that the AO has not made specific charge on the assessee, whether he is levying penalty for concealment of particulars of income or furnishing inaccurate particulars of income. For this, he has relied upon the decision of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory, (2013) 359 ITR 565. The assessee has also challenged penalty levied by the AO on the issue of satisfaction by the AO and argued that unless the AO records required satisfaction, whether assessee has concealed particulars of income or furnished inaccurate particulars of income, no penalty can be levied u/s.271(1)(c) of the Act. The assessee has also challenged penalty levied by the AO on merits in light of Explanation - (3) to Section 271(1)(c) of the Act and argued that conditions prescribed under Explanation - (3) has not satisfied, because the AO has issued notice u/s.148 before the due date prescribed for completion of assessment u/s.153(1) of the Act.

6. The CIT(A) after considering relevant submissions of the assessee and has also relied upon various judicial precedents held that the assessee has failed to file return even belatedly as prescribed u/s.139(1) of the Act, even though, he had income taxable under the Act in excess of the lower slab of income which is not liable to tax and hence, filing return in response to notice issued u/s.148 of the Act and admitting income therein does not absolve the assessee from levy of penalty u/s.271(1)(c) of the Act for concealment of income. Although, the assessee claims to have admitted income voluntarily in the return of income filed u/s.148 of the Act, but such admission is not voluntary, because of investigation carried out by the Department u/s.131(1A) of the Act, where the assessee was confronted with lot of materials which shows huge investments in real estate business. Had an enquiry was not conducted by the Department, the income of the assessee was gone unnoticed. Therefore, there is no merit in the arguments of the assessee that there is no concealment of income, which warrants levy of penalty u/s.271(1)(c) of the Act. The CIT(A) has also rejected arguments of the assessee that the AO has not recorded satisfaction as required under

law, in light of decision of Hon'ble Supreme Court in the case of MAK Data (P) Ltd., vs. CIT, [2013] 358 ITR 593 and held that the AO may not have been explicitly recorded satisfaction in the assessment order, but fact that penalty proceedings have been initiated during assessment proceedings, that too after discussion of facts and circumstances, would amount to AO's satisfaction. The CIT(A) has also rejected arguments of the assessee in light of decision of Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton and Ginning Factory, *supra*, that the AO has not satisfied under which limb he is proposed to levy penalty u/s.271(1)(c) of the Act by holding that when some additions apparently overlap both charges and further penalty was levied for one charge then merely for the reason for non-striking of inapplicable part of show-cause notice does not render the proceedings vitiate. The relevant findings of the CIT(A) are as under:-

“4.0 I have considered the facts and circumstances of the case, observations of the AO in the penalty order, ground and submissions/arguments of the AR. It is an admitted fact that the appellant has not been filing income tax returns for the last five or six years prior to this year despite conducting Real Estate Business on a large scale and carrying on high value transactions in cash and through bank account. He has been earning handsome incomes, much higher than the lower slab of income and liable to payment of income

tax. This is evident from the incomes declared by the appellant himself in the returns of earlier years and this year as well filed after the enquiries of the Department. The appellant never paid any taxes nor had filed returns of income before. Even for this assessment year, the appellant did not pay any advance tax during the relevant previous year. The due date for filing of return had expired. The time permitted for filing belated return had also expired but no return was filed till that date. It was only after the enquiries conducted by the Investigation Wing and impounding of certain documents evidencing income, the appellant had no choice but to file returns of income for the last four years and for this assessment year. The incomes offered for earlier years clearly come under Explanation (3) to Section 271(1)(c) . In so far as the assessment year in appeal, in view of the appellant's failure to file the return even belatedly, it is understood that the income liable to tax and. offered in the return in compliance to notice u/s 148 has not been voluntarily offered to tax as per provisions of the Act. After all, a return filed voluntarily after the time permitted for filing belated return is treated as if that return never exists in the eyes of law. The appellant herein has not voluntarily filed the return even after the time limit permitted for filing belated return u/s 139(4) expired. Therefore, it should be construed as a case similar to where regular return has been filed without showing some income and the same was subsequently a return tiled in response to notice u/s 148 consequent to detection of such income by the Department. In such cases where assesseees surrendered income by filing revised returns after: Departmental actions like survey, search and other enquiries and such returns/ surrenders were accepted in assessment, penalty levied u/s 271(1)(c) has been held as justified by a number of Courts.

4.1 In the case of DCIT vs. R.Padmanabhan [2015] 371 ITR 211, High Court of Madras held as below after considering the facts and circumstances of that case:

"It is seen from the order of the assessing officer that after the survey being conducted in the premises of the assessee, the assessee offered the NRE gifts as income and filed the revised return. Hence, the assessing officer initiated penalty

proceedings. A perusal of the order of the Tribunal reveals that the assessee himself had admitted that it would be very difficult and tough task for him to prove the genuineness of the gifts. The assessee had agreed to offer the said NRE gifts as income only after survey being conducted in the premises of the assessee. But for the survey, the assessee would not have offered the said NRE gifts as income. Hence, the onus is on the assessee to substantiate the said NRE gifts. When the assessee is not able to prove the genuineness of the NRE gifts. The Tribunal is justified in confirming the order of the assessing officer."

"This court had an occasion to consider the issue on the levy of penalty in the decisions reported in M.S. Mohammed Marzook v. ITO [2006] 283 ITR 254 (Mad): M.Shahuk Hameed Batcha v. ITI [2007] 292 ITR 585/[2008] 171 Taxman 19(Mad.) and M.Sajjanraj Nahar V. CIT [2006] 283 ITR 230/155 Taxman 536 (Mad), wherein, this court had elaborately considered the case law on the subject and pointed out to the decision of the Supreme Court in the case of K.P.Madhusudhanan (supra), rendered after the introduction of Explanation to section 271(1) of the Income tax Act. This court held that when the concealment of the income was with reference to the original return and there was explanation at all as regards the non-disclosure the mere claim that the income was offered in the revised return, as a matter of purchasing peace, by itself, would not exonerate the assessee from the culpability. Having regard to the fact that the assessee had not disclosed any reason for the omission in the original return and that the revised return was filed only after the search, this court held that penalty was leviable"

The facts herein are no different from the abovesaid decisions. As seen from the narration in the order of the Tribunal as well as that of the other authorities, the assessee filed the revised return only after survey operation in the business premises of the assessee. The conduct of the assessee, hence, assumed significance in coming forward to disclosed the income in the original return and that the undisclosed income came to be shown only in the revised return, rightly the

Tribunal applied the law as declared by the apex court and by this court.

In the circumstances, we do not find any jurisdiction to cancel the penalty levied by the assessing officer, which is admittedly a minimum penalty"

4.2 In a case where a search took place during which voluntary disclosure of certain income was made by the assessee even though no incriminating document suggesting undisclosed income was found and the assessee filed a revised return disclosing that income, penalty levied u/s.271(1)(c) on that income was upheld by High court of Calcutta in the case of CIT v Prasanna Dugar [2015] 371 ITR 19. Further, SLP filed by the assessee against this judgement was also dismissed by the Hon'ble Supreme Court reported at [2015] 373 ITR 681. Relevant portion of the High Court's order is reproduced as below:

"On the basis of the disclosure, the assessee filed a return on March 31, 2010, offering a sum of Rs.70,00,000 for taxation earned during the assessment year 2008-09. It is not in dispute that for the assessment year 2008-09, the assessee had earlier filed his return in which the aforesaid sum of Rs. 70,00,000 was not disclosed. The case of the assessee, as such, came squarely within the provision of section 271(1)(c) of the Income Tax Act."

4.3 In another case viz., CIT (Delhi) vs Usha International Ltd [2012] 254 CTR 509, High Court of Delhi held with regard to levy of penalty u/s.271(1)(c) as below:

"The further contention of the learned counsel for the assessee that the revised return withdrawing the claim for deduction under section 35 CCA was filed on 05.12.1983 voluntarily and without any prompting or provocation from the income tax department is not acceptable. The survey of the assessee's premises under section 133A took place on 06.10.1983, two

months prior to the date of filing the revised return. The survey itself was a result or as a follow up action to the searches and other inquiries conducted earlier. The cash book of the assessee was impounded during the survey for reasons stated in the preceding paragraph. The proceeds of the donation cheque had already been taken out of the bank account opened in the name of C.L. Swamy between 10.07.1982 and 17.07.1982. The account itself had been closed on 13.08.1982. In the light of these facts, the contention that the revised return was filed voluntarily is untenable. It was provoked by the evidence collected by the revenue and the survey conducted in the assessee's premises on 06.10.1983. In other words the revised return was filed by the assessee only when it was concerned and the income tax authorities had collected material on the basis of which it could be said that the claim for deduction was false or bogus. The filing of the revised return is thus an act of despair and the assessee can gain nothing from it."

4.4 The above decisions confirm the view that concealment is with reference to original return. In the appellant's case, there was no original return also, which means that whole of the income shown in the return in compliance to notice u/s.148 is concealed income. In my view, there is no need to rely on Explanation (3) to Sec.271(1)(c) and in fact the AO has also not brought in this Explanation while levying penalty. The appellant's case falls under the main provision of Sec.271(1)(c). As it can be understood from the above decisions; addition / disallowance in the assessment order over and above the returned income is not always envisaged for levying the penalty and there could be other circumstances like those mentioned in those cases justifying levy of penalty,

4.5 With regard to AR's objection to initiation of penalty proceedings without recording satisfaction in the assessment order, it is relevant to refer to the observations of Hon'ble Supreme Court in the case of MAK Data (P). Ltd v CIT [2013] 358 ITR 593 on this subject, which are as below:

"The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of section 271(1)(c) has a/so been elaborately discussed by this Court in Union of India v. Dharmendra Textile Processors [2008] 13 SCC 369 and CIT v. Atul Mohan Bindal [2009] 9 SCC 589."

In the instant case, AO's satisfaction may not have been explicitly recorded in the assessment order but the fact that penalty proceedings have been initiated during assessment proceedings, that too after discussion of facts and circumstances, would amount to AO's satisfaction. In view of the above observations of the Hon'ble Supreme Court, the AR's objection to explicit non- recording of satisfaction is not acceptable and rejected.

4.6 As far as not being specific about the grounds whether on concealment of particulars or furnishing of inaccurate particulars on which the penalty proceedings were initiated, the AO may have initiated the proceedings on both the grounds as the issues of additions apparently overlap over both the grounds. However, the AO ultimately decided in the penalty order that it is a case of concealment of income. In such circumstances, the third member of Jaipur ITAT, in the case of Grass Field Farms & Resorts (P) Ltd (2016) 70 Taxmann.com 176 held that the notice cannot be held as invalid and did not agree with the assessee's reliance on Karnataka High Court decision in the case of Manjunatha Cotton and Ginning Factory in the following words (Para 26 of the order)

"From the above, it is evident that their Lordships of Hon'ble Karnataka High Court have noticed that the penalty u/s.271(1)(c) can be levied for two specific offences, one is concealing the particulars of income and second for furnishing of inaccurate particulars of income. The AO cannot initiate

penalty proceedings for one offence and then finally levy the penalty for another offence, because in such circumstances the assessee will not get proper opportunity to explain the charge leveled against him. Their Lordships have also noticed that the facts of some cases may attract both the offences and in some cases there may be overlapping of these two offences, but in such cases the initiation of penalty proceedings should also be for both the offences. In my opinion, under the facts of the assessee's case, if may attract both the offences i.e., the concealment of income as well as furnishing of inaccurate particulars of income and therefore the Assessing Officer rightly initiated penalty proceedings for both the offences. In the penalty notice also both the offences were mentioned and therefore, the assessee got the adequate opportunity to explain its stand with regard to both the offences. Thereafter, the Assessing Officer levied the penalty only for furnishing of inaccurate particulars of income. Since, the initiation of penalty proceedings included both the offences and the show cause notice also included both the offences, the assessee got the adequate opportunity to explain both the offences and therefore, there is no illegality in levying the penalty with reference to only one offence. It is not a case where the notice was issued for one offence and the penalty is levied for another offence. Therefore, in my opinion, the above decision of Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (supra) does not support the case of the assessee.”

In the light of the above, I do not find anything illegal in so far as the notice or the levy of penalty. Having been convinced that it is a fit case for levy of penalty, I hold that AO is justified in levying this penalty in the given facts and circumstances and accordingly uphold the same. The grounds are therefore dismissed.”

7. The Id.AR for the assessee submitted that the Id.CIT(A) has erred in sustaining penalty levied by the AO u/s.271(1)(c)

of the Act, without appreciating the fact that although the AO has not specifically referred Explanation-(3), but facts of the present case squarely covered under Explanation – (3) to Section 271(1)(c) of the Act, where penalty can be levied only when the assessee has not filed regular return of income within due date and further, no notice u/s.142(1) or 148 of the Act was issued before the due date specified u/s.153(1) of the Act for completion of assessment. In this case, the AO had issued notice u/s.148 of the Act before the due date specified u/s.153(1) of the Act and for which, the assessee has filed return of income admitting true and correct income, which is evident from the fact that AO has not made any addition to returned income and thus, the case of the assessee does not come under main provisions of section 271(1)(c) of the Act, but squarely covered under Explanation-(3) to Section 271(1)(c) of the Act. In this regard, he relied upon the decision of ITAT in the case of Chhagnlal Suteriya vs. ITO, [2011] 5 TaxCorp (DT) 49802 (Guj). The Id.AR further referring to the decision of Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton and Ginning Factory, *supra*, submitted that the AO has not recorded satisfaction as

required under law before initiation of penalty proceedings, which is evident from the fact that AO has not specifically charged the assessee under which limb the proposed penalty proceedings was initiated. The Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows, has considered the issue while dismissing the SLP filed by the Revenue against the decision of Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton and Ginning Factory, *supra* and hence law is very clear in respect of show-cause notice that unless the AO specifically charges the assessee under which limb the proposed penalty is levied, the whole proceedings becomes invalid and unsustainable in law.

8. The Id.DR on the other hand strongly supporting order of the CIT(A) submitted that it is a clear case of concealment of particulars of income which is evident from facts brought out by the AO during the course of assessment proceedings that the assessee has not filed regular return of income for the impugned assessment years even though, he had taxable income. Although, the assessee has filed return u/s.148 of the Act and admitted income but, fact remains that had enquiry

was not conducted u/s.131(1A) of the Act, the income of the assessee goes unnoticed and hence, it is a clear case of concealment of income which attracts penalty u/s.271(1)(c) of the Act. Therefore, there is no merit in arguments of the assessee that conditions prescribed under Explanation – (3) to Section 271(1)(c) of the Act, are not satisfied to levy penalty.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The AO levied penalty u/s.271(1)(c) of the Act, on the ground that assessee has concealed particulars of income in respect of income declared in return of income filed in response to notice issued u/s.148 of the Act. The triggering point for assessment of income and consequent levy of penalty u/s.271(1)(c) of the Act is investigation conducted by the Department in the case of the assessee u/s.131(1A) of the Act. The Department has carried out an enquiry on the basis of suspicious report generated from income-tax database about investments made by the assessee in real estate properties. During the course of investigation, it was noticed that although the assessee was carrying out real estate business for past

several years, but has not filed return of income for impugned assessment years including for earlier assessment years. Therefore, a statement was recorded and deposition was taken for declaration of income and investments made in business activity. Based on investigation carried out by the Department, assessment has been reopened u/s.147 of the Act and in response the assessee has filed return admitting income and paid relevant taxes. Thereafter, the AO initiated penalty u/s.271(1)(c) of the Act, on the ground that assessee has concealed particulars of income.

10. The moot question that came up for our consideration from the given facts and circumstances of the case is, whether the case of the assessee falls under Explanation-(1) or Explanation-(3) to Section 271(1)(c) of the Act. The AO has levied penalty u/s.271(1)(c) of the Act, without any reference to Explanation-(3) of the Act. It is the case of the assessee that its case covered under Explanation-(3) to Section 271(1)(c) of the Act. We have given our thoughtful consideration to the arguments of the assessee in light of facts brought out by the Id.CIT(A) and we ourselves do not subscribe

to arguments taken by the Id.AR for the assessee for the simple reason that although the assessee has admitted income in the return filed u/s.148 of the Act and further, the AO has not made any additions, but whether such admission of income in the return filed u/s.148 is voluntary or after the Department cornered the assessee with necessary materials, has to be seen. In this case, admittedly the assessee has not filed any return of income before due dates specified u/s.139(1) / 139(4) of the Act. It is also an admitted fact that had investigation was not carried out u/s.139(1A) of the Act, the income of the assessee goes unnoticed. In these circumstances, it is difficult to accept the arguments of the assessee that he had filed returns voluntarily in response to notice u/s.148 of the Act and admitted true and correct income. Therefore, we are of the considered view that the case of the assessee comes under Explanation-(1) but not under Explanation-(3) of Section 271(1)(c) of the Act.

11. We, further are of the opinion that under the given facts and circumstances of the present case, it should be construed that it is a case similar to where regular return has been filed

without showing true and correct income and the same was subsequently declared in a return filed in response to notice u/s.148 of the Act. In such cases, where assessee surrendered income by filing revised returns after the Department unearth escapement of income like survey, search and other enquiries and such returns / surrenders were accepted in assessment, penalty u/s.271(1)(c) of the Act is leviable. This legal position is supported by the decision of Hon'ble High Court of Madras in the case of DCIT vs R. Padmanabhan, [2015] 371 ITR 211. The Hon'ble High Court of Calcutta in the case of CIT vs. Prasanna Dugar, [2015] 371 ITR 19 has considered an identical issue and held that where a search took place, assessee had declared additional income and pursuant to search assessee filed revised return admitting additional income then penalty u/s.271(1)(c) of the Act is leviable. The said decision has been upheld by the Hon'ble Supreme Court while dismissing SLP filed by the assessee reported in [2015] 373 ITR 681. The Hon'ble Delhi High Court in the case of CIT vs. Usha International Ltd., [2012] 254 CTR 509 has considered an identical issue in light of survey conducted in the case of the assessee and declared additional income pursuant to survey, held that when assessee

has filed revised return only when it was cornered by the Income-Tax Authorities by collecting various materials, then such filing of revised return cannot be considered as voluntary but it is an act of despair and the assessee can gain nothing from it. Although, these decisions are rendered in light of assessee filing original return and subsequently filed revised return admitting additional income, but the ratio laid down by the Courts is that when additional income was surrendered pursuant to enquiry conducted by the Department, the penalty provided u/s.271(1)(c) of the Act is applicable. Therefore, in our considered view the present case falls under main provisions of Section 271(1)(c) of the Act and hence, the question of examining the case with reference to Explanation-(3) to Section 271(1)(c) of the Act is incorrect. The CIT(A) has rightly appraised the facts and concluded that the assessee case falls under the provisions of Section 271(1)(c) of the Act and thus, it is a clear case of concealment of particulars of income. Insofar as case laws relied upon by the assessee in the case of Chhangnlal Suteriya vs. ITO, *supra*, we find that the facts of the case before the Hon'ble Gujarat High Court was entirely different and hence, we are of the considered view that

the case law relied upon by the assessee has no application to facts of present case.

12. As regards arguments of the assessee in light of the decision of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory, *supra*, we find that although it is necessary to record satisfaction before issue of notice u/s.274 r.w.s. 271 of the Act, by the AO, whether the proposed penalty proceedings is initiated for concealment of particulars of income or furnishing of inaccurate particulars of income, but fact remains that Hon'ble Supreme Court in the case of MAK Data (P) Ltd. vs. CIT, *supra*, had considered an identical issue and held that the AO has to satisfy whether the penalty proceedings be initiated or not during the course of assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. Thus, the only requirement of law is, the AO has to satisfy himself about initiation of penalty proceedings, but such satisfaction need not be in writing or in a particular manner. In this case, the AO after recording relevant facts of concealment of income, has initiated penalty proceedings u/s.271(1)(c) of

the Act during assessment proceedings itself. Therefore, in our considered view such initiation of penalty proceedings amounts to satisfaction by the AO. Hence, the arguments of the assessee in light of decision of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory, *supra* and the decision of Hon'ble Supreme court in the case of SSA's Emerald Meadows, *supra*, is rejected.

13. Be that as it may. Even in the case of CIT vs. Manjunatha Cotton and Ginning Factory, *supra*, the Hon'ble Karnataka High Court clearly held that the AO may have initiated penalty proceedings on both the grounds, as the issues of additions apparently overlap over both the grounds. The Hon'ble High Court further noted that facts of some case may attract both the offences. But, in some case, there may be overlapping of these two offences. However, in such case, the initiation of penalty proceedings should also be for both offenses. In this case, although the AO has issued notice on the ground of concealment of particulars of income or furnishing inaccurate particulars of income, but finally he has levied penalty for concealment of particulars of income. It is not the case of the

assessee that the AO has initiated penalty proceedings for concealment of particulars of income, but has levied penalty for furnishing inaccurate particulars of income. Therefore, we are of the considered view that the case law cited by the Id.AR for the assessee has no application, because the AO has given opportunity to the assessee to show-cause for which, the assessee has filed his explanation and thereafter the AO has clearly recorded that it is a case of concealment of particulars of income. Further, under similar circumstances, the third member of Jaipur ITAT, in the case of Grass Field Farms & Resorts (P) Ltd., [2016] 70 Taxmann.com 176 held that notice cannot be held as invalid merely for the reason that the AO has issued notice for both limbs and levied penalty for one limb.

14. In this view of the matter and considering facts and circumstances of this case and also by considering decisions of various High Courts, we are of the considered view that there is no error in the reasons given by the Id.CIT(A) to confirm penalty levied by the AO u/s.271(1)(c) of the Act. Hence, we are inclined to uphold the findings of the Id.CIT(A) and dismiss the appeal filed by the assessee.

15. In the result, the appeal filed by the assessee is dismissed.

16. ITA No.264/Chny/2017

The facts and issue involved in this appeal are identical to facts and issue which we had considered in ITA No.263/Chny/2017 for assessment year 2010-11. The reasons given by us in preceding paragraph in ITA No.263/Chny/2017 shall *mutatis-mutandis* apply to this appeal, as well. Therefore, for similar reasons we are inclined to uphold the findings of the Id.CIT(A) in confirming penalty levied by the AO u/s.271(1)(c) of the Act and dismiss appeal filed by the assessee.

17. As a result, the appeals filed by the assessee for both assessment years are dismissed.

Order pronounced in the court on 18th August, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 18th August, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member