

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

**Before Shri George George K, Vice-President &  
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.47/Bang/2024 : Asst.Year 2014-2015

M/s.Korada Furniture Company Private Limited, Kotagondahunushi Kundgol Cross Off. P.B. Road, Hubli – 582 024 Karnataka. <b>PAN : AADCK0835H.</b>	v.	The Deputy Commissioner of Income-tax, Circle 1(1) & TPS Hubli.
(Appellant)		(Respondent)

Appellant by : Sri.Siddesh Nagaraj Gaddi, CA  
Respondent by : Sri.Sandeep Kumar H.S., Addl.CIT-DR

<b>Date of Hearing : 11.03.2024</b>	<b>Date of Pronouncement : 11.03.2024</b>
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**ORDER**

**Per George George K, Vice-President :**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 24.11.2023 passed u/s.250 of the Income-tax Act, 1961 ("the Act" hereinafter). The relevant assessment year is 2014-2015.

2. The solitary issue that is raised is whether the CIT(A) is justified in confirming the penalty imposed u/s.271(1)(c) of the Act, amounting to Rs.15,83,625.

3. The brief facts of the case are as follows:

The assessee is a private company, engaged in the business of manufacture of steel furniture. For the assessment year 2014-2015, the return of income was filed

on 31.03.2015 declaring a loss of Rs.66,48,728. The assessment was selected for scrutiny by issuance of notice u/s.143(2) of the Act on 18.09.2015. The reason for selection of the assessment for scrutiny was to examine the receipt of share application money by the assessee. The Assessing Officer completed the assessment u/s.143(3) of the Act vide order dated 19.12.2016 by making an addition of Rs.26,00,370 u/s.68 r.w.s. 115BBE of the Act.

4. On the same day, notice was issued u/s.274 r.w.s. 271 of the Act. The penalty order was passed on 29.03.2022 u/s.271(1)(c) of the Act, amounting to Rs.15,83,625.

5. Aggrieved by the order imposing penalty u/s.271(1)(c) of the Act, the assessee filed appeal before the first appellate authority. The CIT(A) confirmed the penalty imposed u/s.271(1)(c) of the Act.

6. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR submitted that the penalty notice issued is vague as it does not strike down relevant portion of the notice. In this context, the learned AR relied on the judgments of the Hon'ble jurisdictional High Court in the case of CIT v. Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar.) and CIT v. SSA'S Emerald Meadows reported in (2016) 73 taxmann.com 241 (Karnataka). Further, it was contended that initiation of penalty in the assessment was under the limb "furnishing inaccurate particulars". However, as per the

impugned penalty order, the penalty has been imposed for “concealment of income”. Therefore, it was submitted that there has been total non-application of mind by rendering the imposition of penalty as bad in law. In this context, the learned AR relied on the judgment of the Hon’ble jurisdictional High Court in the case of Kshema Geo Holdings (P.) Ltd. v. ITO reported in (2024) 460 ITR 203 (Kar.) (judgment dated 20.03.2023).

7. The learned Departmental Representative supported the orders of the A.O. and the CIT(A).

8. We have heard the rival submissions and perused the material on record. The assessment proceedings relevant of the assessment year, namely, A.Y. 2014-2015 has been concluded on 19.12.2016 vide order passed u/s.143(3) of the Act. The same is followed by a notice issued u/s.274 r.w.s. 271 of the Act, issued on the same date for imposition of penalty. It is relevant to note therefrom that the notice is vague, inasmuch as no specific limb referred to in section 271(1)(c) of the Act has been mentioned in the notice. A copy of the notice is reproduced below:-

*“F.No.AADCK0835H/ACIT/C-1(1)/2016-17      Date : 19/12/2016*

*NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF  
THE INCOME-TAX ACT, 1961*

*Korada Furniture Company Private Limited.  
Near Kundagol Cross  
Off : PB Road  
Hubballi-580 024.*

Sir,

*Whereas in the course of proceedings before me for the assessment year 2014-15 it appears to me that you have concealed the particulars of your income or furnishing inaccurate particulars of such income.*

*You are, therefore, requested to appear before the assessing officer concerned at 01:00 PM on 09.01.2017 and show cause why an order imposing penalty on you should not be passed u/s.271(1)(c) of the Income-tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c).*

*(J.C.Charles)  
Asstt.Commissioner of Income-tax  
Circle 1(1), Hubballi.”*

9. Penalty notice is not legally tenable as it is contrary to the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Manjunatha Cotton & Ginning Factory (supra). The notice of the penalty is bad in law and without application of mind as grounds for proposed initiation of a penalty notice is not specifically mentioned in the impugned notice. The said notice is standard notice listing out all the grounds on which the assessee can be penalized under the provisions of the Act. In this regard, a reference may be made to the relevant extract of the aforesaid judgment wherein it has been observed and held as under:-

*“..... 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 the 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 the 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 the 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 [2007] 292 ITR 11 (SC) 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 Works reported in [1980] 122 ITR 306 (Guj) and the Delhi High Court in the case of CIT v. Virgo Marketing P. Ltd. reported in [2008] 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.**

#### CONCLUSION

63. **In the light of what is stated above, what emerges is as under :**

.....

(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 grounds mentioned in section 271 are mentioned would not satisfy the requirement of law.**

(r) **The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.**

66. In view of the aforesaid law, we are of the view that the Tribunal was justified in holding that the entire proceedings are vitiated as the notice issued is not in accordance with law and accordingly justified in interfering with the order passed by the appellate authority as well as the assessing authority and in setting aside the same. Hence, we answer the substantial questions of law framed in this case in favour of the assessee and against the Revenue.”

10. Further, reliance is placed on the judgment of the Hon’ble jurisdictional High Court in the case of CIT v. SSA’S Emerland Meadows (supra). The SLP against the aforesaid judgment was dismissed by the Hon’ble Supreme Court. The Hon’ble Supreme Court held as under:-

“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short ‘the Act’) to be **bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income.** The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250 (Kar.).

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed.”

11. Reliance is placed on the following judicial pronouncements:-

- (i) Muninaga Reddy v. ACIT (2017) 396 ITR 398 (Kar.)
- (ii) Safina Hotels (P.) Ltd. v. CIT (2016) 237 Taxman 702 (Kar.)
- (iii) S.Chandrashekar v. ACIT (2017) 396 ITR 538 (Kar.)
- (iv) Prince Consultancy (P.) Ltd. v. DCIT (2017) 54 ITR(T) 334 (Mumbai – Trib.)

- (v) Meherjee Cassinath Holdings (P.) Ltd. v. ACIT (2017) 187 TTJ 722 (Mumbai – Trib.)
- (vi) Mohd.Sharif Khan v. DCIT (2017) 58 ITR (T) 260 (Jaipur-Trib.)
- (vii) Ms.Sandhya Gadkari Sharma v. DCIT (2016) 181 TTJ 462 (Mumbai – Trib.)
- (viii) Kanhaiyalal D.Jain v. ACIT (2017) 185 TTJ 553 (Pune – Trib.)

12. The concealment of income and furnishing of inaccurate particulars of income in section 271(1)(c) of the Act, carry different meanings / connotations. Therefore, the satisfaction of the A.O. with regard to only one of the two breaches mentioned u/s.271(1)(c) of the Act, for initiation of penalty proceedings will not warrant / permit penalty being imposed for the other breach. [Refer Hon'ble Supreme Court in T.Ashok Pai v. CIT (2007) 292 ITR 11 (relied upon in Manjunath Cotton & Ginning Factory (supra)].

13. The aforesaid defect is not curable u/s.292B/BB of the Act. Reliance is placed on the following ruling which is specifically covered in favour of the assessee on the aforesaid issue:-

- (i) K.Prakash Shetty v. ACIT (ITA Nos.265 to 267/ Bang/2014 (order dated 05.06.2014)
- (ii) Kanhaiyalal D.Jain v. ACIT (2017) 88 taxmann.com 830 (Pune – Trib.)
- (iii) Dr.Sarita Milind Davare v. ACIT (2017) 88 taxmann.com 902 (Mumbai – Trib.).

14. Further, it is relevant to note from the assessment order that the penalty has been initiated for 'furnishing inaccurate particulars'. However, as per the impugned penalty order, the penalty is imposed for 'concealment of income'. These

inconsistencies highlight a lack of application of mind rendering the order bad in law. Reliance is placed on the recent judgment of the Hon'ble jurisdictional High Court in the case of Kshema Geo Holdings (P.) Ltd. (supra), wherein it has been noted that *“where a penalty notice under section 274 read with section 271(1)(c) was issued on ground that assessee had `furnished inaccurate particulars of its income’, however, assessment order recorded that penalty was to be levied as assessee had `concealed true and correct particulars of its income’, since penalty proceedings should be confined only to those ground which was specifically stated in penalty notice, impugned penalty order passed upon assessee was not sustainable in law”*.

15. In the light of the aforesaid reasoning and judicial pronouncements, cited supra, we delete the penalty imposed u/s.271(1)(c) of the Act.

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

Order pronounced on this 11<sup>th</sup> day of March, 2024.

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**VICE-PRESIDENT**

Bangalore; Dated : 11<sup>th</sup> March, 2024.  
Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Bangalore