

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.847/JP/2024
निर्धारण वर्ष / Assessment Year : 2010-11

M/s.Dwarka Gems Ltd. 61-B, Sardar Patel Marg, C-Scheme Jaipur	बनाम Vs.	The ACIT Circle-6 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACD8548 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Harshit Agarwal, CA
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 23/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 11/09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 06-05-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2010-11 raising therein following grounds of appeal.

"1. On the facts and circumstances of the case the Id. CIT(A) has erred in confirming the action of the AO in levying penalty u/s 271(1)(c) of the Act at Rs.13,945/- arbitrarily thus the order so passed deserves to be quashed.

2. On the facts and in the circumstances of the case the ld. CIT(A) has erred in confirming the action of the AO of levying the penalty even though the AO has not specified the limb of Section 271(1)(c) of the Income Tax Act under which penalty was sought to be levied in the notice dated 26-03-2013 issued u/s 274 r.w.s. 271(1)(c) of the Act, thus the notice so issued is void ab initio and consequently penalty order so passed deserves to be deleted.

3. On the fact and in the circumstances of the case and in law the ld.CIT(A) has erred in confirming the action of the AO in levying penalty u/s 271(1)(c) of the Act on charge of concealment of income when all the facts were duly disclosed in return of income, thus penalty imposed for concealment of income is not in accordance with law and deserves to be deleted.

4. That the ld.CIT(A) erred in confirming the action of the AO in imposing penalty of Rs.13,945/- by brushing aside the submission of assessee that addition/ disallowance does not automatically result in levy of penalty. Appellant prays penalty levied mechanically by solely relying upon conclusion drawn in assessment proceedings deserves to be deleted.

2.1 Brief facts of the case are that the present appeal is filed against the order of ld. CIT(A) confirming the action of ld. AO in levying penalty u/s 271(1)(c) at Rs. 13,945/- vide order dated 06.05.2024. Brief facts of the case are that assessee is closely held public limited company. Return of income for the year relevant to appeal was filed by assessee on 15.10.2010 declaring total income at Rs. 34,95,030. Case was selected for scrutiny and assessment was completed u/s 143(3) of the Income Tax Act (*henceforth stated as "the Act"*) at total income of Rs. 39,84,422/- by making following additions/ disallowances:

(i)	Disallowance of deduction u/s 80IB	Rs. 15,672/-
(ii)	Disallowance of loss on sale of fixed assets	Rs. 29,457/-
(iii)	Disallowance u/s 40(a)(ia)	Rs. 1,44,263/-
(iv)	Trading Addition	Rs. 3,00,000/-

Aggrieved of the disallowances so made at serial No. (i), (iii) and (iv), appeal was preferred before ld. CIT(A), which has been partly allowed by ld. CIT(A) vide order dated 03.08.2017 (**APB 2-11**) and whereby disallowance of Rs.15,672/- in respect of deduction u/s 80IB and disallowance of Rs.1,44,263/- made u/s 40(a)(ia) has been deleted. Further, trading addition of Rs. 3,00,000 which is being confirmed by ld. CIT(A) is solely on estimate basis and accordingly no penalty was levied by ld. AO on this issue. However, ld AO in his penalty order dated 25.03.2019 has levied penalty against disallowance of Rs. 15,672/- related to deduction u/s 80IB of the Act. Further AO also levied penalty on disallowance of Rs.29,457/- made towards against loss on sale of assets. The Appellant preferred appeal before ld. CIT(A) but remained unsuccessful.

2.2 Against the order of ld. CIT (A), the present appeal has been filed by the assessee on the grounds mentioned here in above.

2.3 Through the grounds of appeal raised before me, I found that the appellant has collectively challenged the validity of the notice initiating penalty proceedings under section 271(1)© of the Income Tax Act.

2.4 In this regard ld. AR appearing on behalf of the appellant reiterated the same arguments as was raised by him before the revenue authorities and also relied on his written submission . It was pointed out that defective notice was served upon the appellant for initiating penalty and also on merits no penalty is leviable in the case of the appellant.

2.5 On the other hand ld. DR appearing on behalf of the revenue relied upon the orders passed by the revenue authorities.

2.6 I have heard the counsel for the parties and I have also perused the material placed on record, judgements cited by the parties and also the orders passed by the revenue authorities. From the records I noticed, that the assessee company has collectively challenged the validity of notice initiating penalty proceeding u/s 271(1)(c) and further challenged the action of ld. CIT(A) in confirming the penalty on charge of concealment of income by ignoring the fact that all the details are duly disclosed by the assessee company in the return of income and therefore, the same are canvassed together for the sake of convenience. In this regard, it is submitted that preliminary issue challenging the validity of the order imposing penalty under Section 271(1)(c) of the Act for during the year under consideration is the defective notices for initiating penalty issued by the ld. AO u/s 274 r.w.s 271 of the Act dt. 26.03.2013 (**APB 1**) for the aforesaid assessment year, where in it can be observed that the show cause notices issued to

the assessee company u/s 274 r.w.s 271 of the Act, ld. AO has not spelt out as to whether the assessee company has concealed the particulars of his income or furnished inaccurate particulars of his income. It is further submitted that ld. AO had strike off all other paragraph other than “ have concealed particulars of your income or furnished inaccurate particulars of such income” but has not deleted the in applicable words and phrases out of these two limbs, which he is required to do. Thus the said show cause notice issued under Section 274 r.w.s 271 do not spell out the charge against the assessee; i.e. as to whether the assessee is guilty of having concealed particulars of income or of having furnished inaccurate particulars of income. The above said act of AO clearly shows that the penalty has been initiated in a mechanical manner and the Ld. AO has grossly failed in ensuring proper application of mind before initiating the penalty proceedings. It is trite law, that for the purpose of initiating penalty proceedings u/s 271(1)(c), the Ld. AO has to record his subjective satisfaction (after proper application of mind) as to whether it is a case of the concealment of income or of furnishing of inaccurate particulars of income. It is very necessary to clearly specify in the notice of section 274 as to for what reason the penalty u/s 271(1)(c) is being proposed to be imposed. In the absence of such specification, the assessee is not in a position to give proper explanation in his defence. Again, at the cost of repetition it is mentioned that, concealment of income is quite different from furnishing

inaccurate particulars of income. The Hon'ble Supreme Court in the case of **Sri T.**

Ashok Pai vs Commissioner Of Income Tax 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. Thus, these are two limbs of

section 271(1)(c) of the Act and the officer initiating penalty has to clearly specify

as to under which limb the penalty is being proposed to be imposed. The Hon'ble

Karnataka High Court in the case of **Commissioner of Income Tax vs.**

Manjunatha Cotton And Ginning Factory (2013) 359 ITR 565, after elaborately

considering the penalty provisions u/s 271(1)(c) has observed / held as under:

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

a)

b)

c)

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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 1B 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 above mentioned directions at serial nos. (p), (q), (r) & (s) have clearly been violated by the Ld. AO in the instant case as is clear from the facts of the case as pointed out above in the preceding paras. Further, the Hon'ble Karnataka High Court in the case of **CIT Vs. SSA'S Emerald Meadows ITA No. 380/2015** had dismissed the appeal of Revenue, where the Tribunal had allowed the appeal of assessee holding that the notice issued by the Assessing Officer under section

274 r.w.s. 271(1)(c) of the Act to be bad in law as it does not specify as to under which limb of section 271(1)(c) of the Act the penalty has been initiated. The Hon'ble High Court had relied on decision of Division Bench of the Court rendered in CIT &Anr. Vs. Manjunatha Cotton and Ginning Factory (supra). It is further to bring to the notice of your goodself that the Hon'ble Supreme Court in CIT Vs. SSA'S Emerald Meadows has dismissed the Special Leave Petition of the department, as reported in[2016] 73 taxmann.com 248 (SC). The Hon'ble Jurisdictional ITAT in the case of **Shankar Lal Khandelwal Vs DCIT** (ITA 878/JP/2013 order dated 11.03.2016) has followed the abovesaid decision of the Hon'ble Karnataka High Court and has held as under:

"6. We have heard the rival contentions of both the parties and perused the material available on the record. In this case, the ld Assessing Officer initiated penalty proceedings for concealing of particulars of income and for furnishing inaccurate particulars of income vide order dated 31/12/2009. Notice U/s 274 read with Section 271-272 of the Act was issued on 30/12/2009 by ticking of the notice as under:-

"U/s 271(1)(c):- Concealed particulars of income or furnished inaccurate particulars of income".

The ld Assessing Officer again gave notice during the course of penalty proceedings on 23/1/2012 wherein he gave show cause notice U/s 271(1)(c) for imposing of penalty without specifying the limb for reasons to impose the penalty, whether it is for concealed particulars of income or furnished inaccurate particulars of income. The ld CIT(A) has considered all the aspect and held that Explanation 5A to Section 271(1)(c) is applicable as in this case, a search was carried out after 01/6/2007 and the assessee has furnished return for A.Y. 2007-08 before search and additional income has been disclosed U/s 153A. Therefore, deeming provisions are applicable. It is undisputed fact that the assessee has disclosed additional income in return filed U/s 153A on the basis of incriminating document found during the course of search.

We have considered view that Explanation 5A is not required to be mentioned by the Assessing Officer specifically at the time of initiation or even in the show cause notice issued by the Assessing Officer, but basic defect we found that the ld Assessing Officer

*has mentioned at the time of initiation of penalty proceeding under both the limbs i.e. concealed the particulars of income and furnished inaccurate particulars of income but at the time of notice U/s 274 he simply has ticked in prescribed proforma concealed particulars of income or furnished inaccurate particulars of income without deleting either limb of penalty even he has not put and in the notice itself between two limbs. The amended provisions of Sub-section (1B) of Section 271 has been considered by the Hon'ble Delhi High Court in the case of **Madhu Shree Gupta vs. UOI, 317 ITR 107** wherein it has been held that at the stage of initiation of penalty proceedings, the order passed by the Assessing Officer need not reflect satisfaction vis-a-vis each and every item of addition or disallowance if the overall sense gathered from the order is that a further prognosis is called for. It would be sufficient compliance with the law that there is a prima facie evidence for concealment of particulars of income or furnishing inaccurate particulars of income. Even after this section, the Assessing Officer has to satisfy the particular limb of initiation of penalty imposable U/s 271(1)(c) of the Act at the time of assessment proceedings. The Hon'ble Karnataka High Court in the case of **CIT vs. M/s Manjunatha Cotton & Ginning Factory & Ors.(2013) 359 ITR 565 (Karn)** held that sending printed form where all the grounds mentioned in section 271 would not satisfy the requirement of law. The assessee should know the ground which he has to meet specifically, otherwise, the principle of natural justice is offended on the basis of such proceedings, no penalty could be imposed to the assessee. The Hon'ble Punjab & Haryana High Court in the case of **TejBhan Cotton Ginning & Pressing Factory Vs. CIT, Rohtak** (supra) has held that the Assessing Officer in assessment order has satisfied himself regarding initiation of penalty proceedings, which was tantamount to satisfaction have recorded to the fact on the basis of addition made by the Assessing Officer for concealed income in assessment order. The Hon'ble Court has confirmed the penalty even penalty proceedings initiated by the Assessing Officer by mentioning penalty proceeding for concealing/furnishing of inaccurate particulars of income. The Hon'ble Punjab & Haryana High Court has expressed different view on initiation of penalty proceedings even notice U/s 274 issued by putting oblique between concealing and furnishing of inaccurate particulars of income whereas the Hon'ble Karnataka High Court has held that the Assessing Officer has to satisfy at the time of initiation of penalty proceeding and issuing notice U/s 274 of the Act that whether penalty is for concealed particulars of income or furnishing of inaccurate particulars of income. There were two opinions of the Hon'ble Courts. The Hon'ble Supreme Court has held that in case of two views of the court, favourable view of the assessee would be taken as held in the case of **CIT Vs Vegetable Products Ltd. (1973) 88 ITR 192 (SC)** and a recent decision in the case of **CIT Vs. Vatika Township P Ltd. (2014) 367 ITR 466 (SC)**. Therefore, we are of the considered view that initiation of penalty proceedings is not as per law and Assessing Officer did not have any jurisdiction to impose penalty U/s 271(1)(c) of the Act. As the matter has been decided on technical issue, we are not expressing any view on merit of the case. Accordingly, we delete the penalty confirmed by the ld CIT(A).*

7. *In the result, the appeal of the assessee is allowed."*

The ITAT, Jaipur Bench in its judgment in case of **Shri Murari Lal Mittal ITA No. 334/JP/2015 order dated 09/11/16** has cancelled the penalty on the same grounds following the decision of **Shri Shankar Lal Khandelwal**(supra). The abovesaid two judgments have been followed by the Hon'ble ITAT, Jaipur Bench in the case of **Narayana Heights & Towers Vs. ITO ITA No. 1033/JP/2016, order dated 20.02.2017**. Similarly, the Pune Bench of Tribunal in **M/s. Sai Venkata Construction Vs. Addl. CIT** (ITA Nos. 994 & 995/2013, order dated 11.03.2016) and in **Sanjog Tarachand Lodha Vs. ITO** (ITA Nos. 688 and 689/PN/2014 order dated 31-08-2015) have applied the ratio laid down by the Hon'ble Karnataka High Court (supra) and held that where there is no striking off of either of limbs, then notice issued under section 274 r.w.s. 271(1)(c) of the Act was invalid and subsequent penalty proceedings were held to be vitiated. Also, the Mumbai Bench of Tribunal in **Sanghavi Savla Commodity Brokers P. Ltd. Vs. ACIT** (ITA No.1746/Mum/2011, order dated 22.12.2015) while deciding similar issue, wherein the Assessing Officer had initiated penalty proceedings for concealment of particulars of income without striking inappropriate words or any parts of notice and proceeded to levy penalty for concealment, then following the ratio laid down by the Hon'ble Karnataka High Court, the Tribunal held that notice issued for initiating penalty proceedings were invalid and consequently penalty proceedings were invalid. Similar proposition has been laid down by Kolkata Bench of Tribunal

in **Shri Deepak Kumar Patwari Vs. ACIT** (ITA Nos. 616 to 618/Kol/2013 order dated 03.02.2016) and it has been further held that the provisions of section 292B of the Act cannot cure the basic defect in assumption of jurisdiction and could only cure the mistake, defect or omission in the return of income, assessment, notice or the proceedings. The Tribunal further held that show cause notice and the reasons mentioned in the show cause notice were part of process of natural justice and the defect in such notice could not be overlooked. In support of the above contentions, further reliance is placed on the judgement of Delhi High Court in the case of **Commissioner Of Income Tax Vs. Virgo Marketing [2008] 171 Taxman 156 (Del)** wherein it has been held as under:

“11. We are unable to discern from a reading of the assessment order why the Assessing Officer chose to initiate penalty proceedings against the assessed and under which part of Section 271(1)(c) of the Act. In other words, we are unable to discern from the assessment order the reason for initiating penalty proceedings. Therefore, the concurrent view held by both the authorities below must be accepted.

12. The procedure that we have adopted has been consistently followed by us in a large number of cases, some of which are Commissioner of Income Tax Del v. O.K. Hosiery Mills P. Ltd. ITA No. 12/2007 decided on 14th September, 2007, Commissioner of Income Tax v. Bharat Hotels Ltd. ITA No. 1074/2006 decided on 14th September, 2007, Commissioner of Income Tax v. Bharat Hotels Ltd. ITA No. 935/2006 decided on 14th September, 2007, Commissioner of Income Tax v. Fibro Tech Chemicals ITA No. 954/2006 decided on 14th September, 2007, Commissioner of Income Tax v. Preeti Aggarwala ITA No. 850/2006 decided on 15th September, 2007, Commissioner of Income Tax v. Smt. Santosh Sharma ITA No. 1088/2006 decided on 17th September, 2007 and Commissioner of

Income Tax v. O.P. Lohia ITA No. 1052/2007 decided on 1st November, 2007.

13. *Even though the law has been settled by this Court in a very large number of cases, apart from Ram Commercial Enterprises such as Diwan Enterprises v. Commercial of Income and Commissioner of Income Tax v. B.R. Sharma, the Revenue is still filing these sort of appeals for no apparent reason. By this casual attitude of the Revenue, the Registry (apart from this Court) has been put under severe pressure in dealing with a large influx of appeals, which prima facie do not have any merit. By this flood of litigation, the Revenue is ensuring that more important cases, where stakes are much higher and where perhaps the Revenue has a better case, get receded into the background and their turn cannot come up in the near future. We have been repeatedly observing this but to no effect.”*

Recently Karnataka High Court in the case of Muninaga Reddy Vs. ACIT reported in 396 ITR 398 has held as under:

“In order to levy penalty, the notice would have to specifically state the ground mentioned in section 271(1)(c) of the Income Tax Act, 1961, namely whether it is for concealment of income or furnishing incorrect particulars of income that the penalty proceedings are being initiated. Sending a printed form with the grounds mentioned in section 271 of the Act would not satisfy the requirement of law. The assessee should know the ground which he has to meet specifically otherwise the principles of natural justice would be violated and consequently, no penalty could be imposed on the assessee if there is no specific ground mentioned in the notice:

Held accordingly, that there was a printed notice and no specific ground was mentioned, which may show that the penalty could be imposed on the particular ground for which the notice was issued. Hence the notice and the consequent levy of penalty were not valid.”

The Hon’ble Karnataka High Court in the aforesaid judgement has taken note of decision in the case of **CIT Vs. Manjunatha Cotton & Ginning Factory** reported in **359 ITR 565 (Karn.)** and further observed as follows:

“As per the above referred decision of this court, the notice would have to specifically state the ground mentioned in section 271(1)(c) of the Act namely as to whether it is for the concealment of income or furnishing incorrect particulars of the income the said penalty proceedings is being initiated. The second aspect is that, as held by this court, sending of printed form wherein the grounds mentioned in section 271 of the Act would not satisfy the requirement of law. The third aspect for which the observations are made by this court is that, the assessee should know the ground which he has to meet specifically otherwise the principles of natural justice would be violated and consequently, no penalty could be imposed on the assessee if there is no specific ground mentioned in the notice. No specific ground is mentioned in the subject notice and resultantly the principles of natural justice could be said as being violated.

*In our view, if the observations made by this court in the above referred decision and more particularly clauses (p), (q) and ® are considered, it was a case wherein the decision of this court would apply and it cannot be said that the decision of this court in the case of **CIT Vs. Manjunatha Cotton and Ginning Factory** reported in [2013] 359 ITR 565 (Karn) would not apply.*

*In view, of the aforesaid discussion, if the decision of this court in the case of **CIT Vs. Manjunatha Cotton and Ginning Factory** reported in [2013] 359 ITR 565 (Karn) is considered, the resultant effect would be that the notice in question issued u/s 271(1)(c) for levy of penalty and consequently the penalty imposed, both would be unsustainable and cannot stand in the eye of law.”*

Similarly in another case namely **S. Chandra Shekhar Vs. ACIT 396 ITR 538**

(Karn.), the Hon’ble Karnataka High Court has again relied upon the case of CIT

Vs. Manjunatha Cotton & Ginning Factory and held as under:

“Held, that in the notice, there was no clear indication about the concealment of the particulars of the income, nor was there clear indication of furnishing of inaccurate particulars of the income on application of mind. In any case as there was no specific ground, there

would be breach of principles of natural justice and ultimately the order imposing penalty even otherwise also could not be sustained.”

After appreciating the orders passed by Id. CIT(A) , I found that the Appeal of the assessee was dismissed by Id. CIT(A) by relying upon the judgement of Co-ordinate bench of ITAT Hyderabad bench in the case of Moola Padmaja versus ACIT, Central Circle 3(2) in ITA No.234/Hyd/2022 dated 22-02-2023. Since the facts contained in the case of Moola Padamja (supra) were different from the facts of the present case , therefore the para materia contained in that judgement is different from the facts of the present case and thus the same is not applicable. More over in the assessment order passed by the AO, it has been mentioned "OR" between the two Limbs of penalty and therefore in my view Id. CIT(A) arbitrarily confirmed the action of AO on imposing the penalty for the concealment of income that too without bringing on record as to how this Limb is attracted. Therefore considering the totality of facts and circumstances as well as legal preposition as discussed by me above, I am of the considered view that where there is no striking off either of limbs then notice issued under section 274 read with section 271(1)(c) of the Act was invalid and subsequent penalty proceedings were held to be invalid. Hence I direct the AO to delete the penalty.

3.0 In the result, the appeal filed by the appellant stands allowed with no orders

as to cost.

Order pronounced in the open court on 11/09/2024.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/09/2024

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s.Dwarka Gems Ltd.. , Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle -6, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 847/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar