

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI SONJOY SARMA, JM**

**ITA No. 959/Coch/2024  
Assessment Year: 2015-16**

Thekkinian Poulouse Varkey ..... Appellant  
Thekkinian (H), Koratty South P.O., Thrissur 68030  
[PAN: AEDPV4959E]

vs.

ACIT, Circle - 2(1), Thrissur ..... Respondent

Assessee by: Ms. Niveditha K. Kammath, Advocate  
Revenue by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 09.06.2025  
Date of Pronouncement: 31.07.2025

**ORDER**

**Per: Inturi Rama Rao, AM**

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 26.09.2024 for Assessment Year (AY) 2015-16.

2. Brief facts of the case are that the appellant is an individual engaged in the business of executing construction contracts under the name and style of T.P. Constructions. The return of income for AY 2015-16 was filed on 30.09.2015 declaring income of Rs. 33,30,150/-. Against the said return of income, the assessment was

completed by the ACIT, Circle 2(1), Thrissur (hereinafter called "the AO") vide order dated 22.09.2017 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total income of Rs. 1,30,92,150/-. While doing so, the AO brought to tax the addition to capital of Rs. 97,62,000/- disbelieving the sundry creditors appearing in the Balance Sheet and the said assessment was not agitated before the appellate forum. Thus, the assessment attained finality. The AO also initiated penalty proceedings u/s. 271(1)(c) of the Act by issuing show cause notice dated 23.08.2017 calling upon the appellant to show cause as to why order imposing penalty should not be passed. In response to the show cause notice the appellant filed an explanation stating that the sundry creditors were offered to tax and the addition was made on the confession made by the appellant itself and the tax due on the addition was duly paid by the appellant. Therefore, the appellant is not guilty of furnishing inaccurate particulars of income or concealing particulars of income. Therefore, no penalty should be levied. However, the AO rejected the above explanation and proceeded with levy of penalty u/s. 271(1)(c) of Rs. 34,05,000/- vide order dated 20.02.2020.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO by holding that mere non-striking of relevant limb does not render the penalty proceedings invalid by referring to certain judicial precedents.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The learned counsel for the assessee submitted that the show cause notice issued u/s. 274 r.w.s 271(1)(c) of the Act is defective as the show cause notice does not specify the limb on which the penalty is being levied, placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT v. SSAs Emerald Meadows [2016] 73 taxmann.com 248. It is further submitted that since the appellant had voluntarily offered the amount to tax, the question of penalty does not arise.

6. On the other hand, the learned CIT(A), placing reliance on the orders of the learned lower authorities submits that the order passed by the CIT(A) is a reasoned one and requires no interference.

7. We have heard the rival contentions and perused the material available on record. The issue in the present appeal relates to levy of penalty under the provisions of section 271(1)(c) of the Act. The penalty was levied by the AO in respect of addition made u/s. 68 disbelieving the existence of sundry creditors. The addition was made on the confession made by the assessee himself. The said addition was not agitated in appeal proceedings. Merely because the assessee accepted the addition, it does tantamount to concealment of income or furnishing of inaccurate particulars of income. The AO has not referred to any material furnished by the assessee which is

found to be false by the AO. It is also settled position of law that merely because the assessee agreed to the addition, it does not lead to the conclusion that the assessee had concealed particulars of income or furnished inaccurate particulars of income in view of the decision of the Hon'ble Supreme Court in the case of Shadilal Sugar Co. v. CIT. In view of this settled position of law it cannot be said that the appellant is guilty of furnishing of incorrect particulars of income or concealing particulars of income. Therefore, no penalty can be levied. Therefore, the order of the CIT(A) is set aside and the penalty levied is deleted.

8. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 31<sup>st</sup> July, 2025.

Sd/-  
**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Cochin, Dated: 31<sup>st</sup> July, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar  
ITAT, Cochin