

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

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

**ITA No. 388/Coch/2025
Assessment Year: 2013-14**

Dy. CIT, Circle 1(1) & TPS, Thrissur Appellant
[PAN: ADOPA9351R]

vs.

Arun Majeed Respondent
Palak Velyannur Temple Road
Veliyannur, Thrissur 680021

Appellant by: Smt. Leena Lal, Sr. D.R.
Respondent by: ----- None -----

Date of Hearing: 05.06.2025
Date of Pronouncement: 31.07.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)] dated 05.03.2025 for Assessment Year (AY) 2013-14 deleting the penalty u/s. 271(1)(c) of Income Tax Act, 1961 (hereinafter "the Act").

2. Brief facts of the case are that the respondent assessee is a partner in 22 firms and is also a Director of two private limited companies. The return of income for AY 2013-14 was filed on 30.09.2013 declaring income of Rs. 4,19,19,120/-. Subsequently,

search seizure operations were conducted in the residential premises of the assessee u/s. 132 of the Act on 18.12.2013. Consequently the AO issued notice u/s. 153A of the Act. In response to the notice u/s. 153A, the appellant filed return of income on 30.03.2016 disclosing total income of Rs. 8,53,43,930/- by disclosing additional income of Rs. 4,34,24,801/-. Against the said return of income, the assessment was completed by the DCIT, Circle-1(1) & TPS, Thrissur (hereinafter called "the AO") vide order dated 31.03.2016 passed u/s. 143(3) r.w.s. 153A of the Act at a total income of Rs. 16,14,73,030/- by making the following additions to the returned income: -

i) Capital gain	Rs. 8,74,837
ii) Profit from land sale	Rs. 10,66,19,832
iii) Rent	Rs. 1,08,000
iv) Credits in FB Olarikkara	Rs. 3,74,61,047
v) Credits in YES Bank	Rs. 1,00,00,000
vi) Cash Deficit	Rs. 47,03,300
vii) Inflation of expenses	Rs. 5,97,259
viii) Undisclosed discount	Rs. 11,09,051

3. Being aggrieved, an appeal was filed before the CIT(A), who granted substantial relief to the assessee by sustaining the addition only to the extent of Rs. 75,32,783/-. The consequential order to CIT(A)'s order was passed and the AO initiated penalty proceedings u/s. 274 and 271(1)(c) of the Act for concealment of income by recording satisfaction in the assessment order. In response to the show cause notice the appellant had submitted reply that the additions were made based on estimates and the additions sustained

by the CIT(A) to the extent of Rs. 75,32,783/- were accepted to avoid protracted litigation. However, the AO had proceeded with levy of penalty by holding that the case of the appellant would fall within the provisions of Explanation 5A to section 271(1)(i)(c) by holding that the appellant is guilty of concealment of income. Accordingly, proceeded with levy of penalty of Rs. 91,86,500/- u/s. 271(1)(c) vide order dated 10.01.2020.

4. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order deleted the penalty by holding that the AO had not specifically mentioned whether the penalty is proposed in respect of concealment of income or furnishing inaccurate particulars of income placing reliance on the decision of the Hon'ble Kerala High Court in the case of PCIT v. Ambadi Krishna Menon ITA No. 75 of 2020.

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

6. When the appeal was called on nobody appeared on behalf of the assessee despite due service of notice of hearing. Therefore, we proceeded to dispose of the appeal after hearing the learned Sr. DR.

7. The learned Sr. DR submits that the learned CIT(A) ought not have deleted the penalty u/s. 271(1)(c) by holding that the AO had not specified on which limb the penalty is proposed to be levied and the ratio of the decision of the Hon'ble Kerala High Court in CIT v.

Ambadi Krisha Menon have no application, as the case of the appellant clearly falls within the ambit of Explanation 5A to section 271(1)(c) of the Act. She further submits that in the assessment order, the AO had clearly recorded that penalty proceedings u/s. 271(1)(c) are initiated for concealment of particulars of income.

8. We have heard the rival contentions and perused the material available on record. The issue that arise for our determination is whether the CIT(A) was justified in deleting the penalty levied u/s. 271(1)(c) by holding that the AO had not specified whether the penalty was proposed in respect of concealment of income or furnishing of inaccurate particulars of income. The undisputed facts of the case are that pursuant to the search and seizure operations conducted in the residential premises of the appellant a notice u/s. 153A was issued to the appellant. In response to the notice u/s. 153A the appellant had offered additional income of 4,34,24,801/-. Against that return of income assessment was completed by the AO vide order dated 31.03.2016 after making further additions. On appeal before the CIT(A), the additions made by the AO are reduced to 75,32,783/-. In the assessment order, the AO had clearly recorded a satisfaction that the penalty proceedings u/s. 271(1)(c) were initiated for concealment of income. Accordingly, penalty proceedings were finalised by holding the appellant guilty of concealing income and levied penalty of Rs. 91,86,500/-. On appeal before the CIT(A), the CIT(A) deleted the penalty by holding that the show cause notice issued by the AO is defective, as the AO

failed to specify whether the assessee had conceal income or furnished inaccurate particulars of income. In our opinion provisions of Explanation 5A to section 271(1)(c) were squarely applicable to the facts of the present case, which reads as under: -

“Failure to furnish returns, comply with notices, concealment of income, etc.

271. (1) If the Assessing Officer or the ⁹⁸[Joint Commissioner (Appeals) or the] Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

.....

Explanation 5A.— Where, in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of—

- (i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or***
- (ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,***

which has ended before the date of search and,—

- (a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or***
- (b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,***

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.”

9. Thus, provision of Explanation 5A raises a presumption that where the appellant discloses additional income consequent to search seizure operations in the return filed in response to section 153A of the Act the appellant is guilty of concealment of income. The statutory provisions raise unrebutable presumption that the assessee is guilty of concealment of income. The statutory provisions clearly override the show cause notice. The ratio of the decision of the Hon'ble Jurisdictional High Court has not application to the facts of the case. Thus, the CIT(A) had clearly fell in error in applying the decision of the Hon'ble Jurisdictional High Court. The order of the CIT(A) is reversed and the order of penalty passed by the AO is restored.

10. In the result, the appeal filed by the Revenue stands allowed.

Order pronounced in the open court on 31st July, 2025.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 31st 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

By Order

Assistant Registrar
ITAT, Cochin