

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, JUDICIAL MEMBER  
AND  
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

**ITA No.1324(Bang) 2013  
(Assessment year : 2008-09)**

Shri W.S.Basheer,  
Prop: Wawanna Hardware,  
No.279, 27<sup>th</sup> Cross, 3<sup>rd</sup> Block,  
Jayanagar,  
Bangalore  
**PAN No.AAGPW0544B**

Appellant

**Vs**

The Income Tax Officer,  
Ward-4(1),  
Bangalore

Respondent

**Assessee by : Shri S. Ramasubramanian, CA  
Revenue by : VAR Sreenivasan, JCIT**

**Date of hearing : 13-06-2016  
Date of pronouncement : 22-07-2016**

**O R D E R**

**PER SHRI A.K.GARODIA, AM:**

This is assessee's appeal directed against the order of the ld.CIT(A)-II, Bangalore dated 02-07-2013 for the assessment year : 2008-09.

2. The assessee has raised the following grounds in its appeal;

*"1. That the order of the ld. CIT(A) insofar it is prejudicial to the interest of the appellant is bad in-operative in law.*

*2. The ld. CIT(A) erred in law and on facts in confirming the levy of penalty u/s 271(1)(c) of the Act.*

*3. That the ld. CIT(A) erred in law and on facts in confirming the levy of penalty merely by rejecting the explanation of the appellant without bringing on record any material to prove that the appellant has concealed the income.*

*4. That the ld. CIT(A) erred in law and on facts in confirming the levy of penalty ignoring the fact that the appellant has accepted the addition only to buy peace.*

*Each of the above grounds is without prejudice to one another and the appellant craves to leave of Hon'ble ITAT to add, delete amend or otherwise modified either all or any of the above grounds either before or during the hearing".*

3. Regarding the additional grounds, it was submitted by the ld. AR of the assessee that in the notice issued by the AO u/s 274 r.w.s.271 of the IT Act, 1961 dated 13-12-2010 of which he submitted a copy before us, the AO has not specified the charge as to whether he is intending to levy penalty in respect of concealment of income or in respect of furnishing of inaccurate particulars of income. Thereafter, he placed reliance on the judgment of the Hon'ble Karnataka High Court in the case of CIT Vs Manjunatha Cotton & Ginning Factory, as reported in 359 ITR 565(Kar.) and contended that as per this judgment, in the facts of the present case, penalty order passed by the AO is not sustainable for the reason that the AO has not specified the charge for which he is intending to levy penalty.

4. The ld. DR of the revenue supported the orders of authorities below.

5. We have considered the rival submissions and we find force in the submissions of the ld. AR of the assessee because, we find that in the notice issued by the AO u/s 274 of the IT Act, r.w.s.271(1)(c) of the IT Act, 1961 the AO has not specified the charge against the assessee as to whether the allegation is for the concealment of income or for furnishing of inaccurate particulars of income. Under the facts, as per judgment of the Hon'ble Karnataka High Court cited by the ld. AR of the assessee as noted above, the penalty order passed by the AO is not sustainable. Therefore, we quash the same.

6. In view of our decision, with regard to additional grounds the main grounds in the appeal memo do not require any separate adjudication.

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

Order pronounced in the open court on the date mentioned on the caption page.

**Sd/-**  
**(N.V.VASUDEVAN)**  
**JUDICIAL MEMBER**  
Bangalore:  
Dated : 22.07.2016  
**am\***

**Sd/-**  
**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order,  
AR, ITAT, Bangalore

|     |                                                                                                 |
|-----|-------------------------------------------------------------------------------------------------|
| 1.  | Date of Dictation .....                                                                         |
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| 13  | Date of dispatch of order.....                                                                  |