

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'D': NEW DELHI)**

**BEFORE SHRI N.K BILLAIYA, ACCOUNTANT MEMBER  
&  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No:- 644/Del/2015  
(ASSESSMENT YEAR : 2008-09)**

M/s Kaveri Infrastructure Pvt. Ltd., B-14, Kaveri House, Geetanjali Enclave, New Delhi.	Vs.	DCIT Central Circle-06 New Delhi.
<b>PAN No:</b> AABCK7148K		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Sh. R.S. Singhvi, CA  
&  
Sh. Satyajeet Goel, CA.  
**Revenue by** : Sh. Amit Jain, Sr. DR

**Date of Hearing** : 09.07.2018.  
**Date of Pronouncement** : 17/07/2018.

**ORDER**

**PER: KULDIP SINGH, JM**

The Appellant, M/s Kaveri Infrastructure Pvt. Ltd., New Delhi- (hereinafter referred to as 'the Assessee') by filing the present appeal, sought to set aside the impugned order dated 22.12.2014 passed by Ld.

CIT(A)-24, New Delhi, affirming the penalty order dated 18.03.2013 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short the 'Act'), qua Assessment Year 2008-09, on the grounds that:-

- 1.(i) *That on the facts and circumstances of the case, the Ld.CIT(A) is not justified in confirming penalty of Rs. 18,09,936/- on the alleged ground of concealment/furnishing of inaccurate particulars of income.*
  - (ii) *That various additions and disallowance being subject matter of dispute are based on change of opinion and are also not in conformity with provisions of sec. 153A of the Income Tax Act, 1961.*
  - (iii) *That the penalty has been imposed without recording proper satisfaction and application of mind.*
2. *That even otherwise, mere addition or disallowance could not be the basis for concealment as all the particulars relating to the additions and disallowance were part of record and as such there is not case of concealment/furnishing of inaccurate particulars of income.*
  3. *That the penalty order is not justified on facts and same is bad in law.*
  4. *That appellant craves to add, alter, amend and delete any of the grounds of appeal before or at the time of hearing."*

**2.** Briefly stated the facts necessary for adjudication of the controversy at hand are:- Assessment has been completed u/s 143(3)/153A of the Income Tax Act, 1961 (for short the 'Act') at the total income of Rs. 82,73,324/- as against the returned income of Rs. 32,52,687/-, by making three additions of Rs. 5,50,000/-, Rs. 42,40,549/-, Rs. 10,66,846/- and Rs. 8,36,758/-, on account of unexplained income of the assessee, disallowance of expenditure claimed by the assessee for making payment of various Jal Board Official for getting favours

/contracts, on account of disallowance of 10% of the site labour expenses claimed by the assessee, restricting the deduction claimed u/s 80G of the Act to 10% of the GTI respectively. Consequently, AO proceeded to initiate the penalty proceedings u/s 271(1)(c) of the Act vide notice dated 29.12.2009 calling upon the assessee to explain as to why the penalty u/s 271(1)(c) being not levied, on the additions made by the AO. Declining the contentions, raised by the assessee, AO proceeded to levy a penalty of Rs. 18,09,936/- u/s 271(1)(c) of the Act.

**3.** Assessee carried the matter by way of challenged the penalty order before the Ld. CIT(A), who has confirmed the penalty order by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by challenging the present appeal.

**4.** We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**5.** Undisputedly, assessment was completed u/s 143(3)/ 153A of the Act, in the light of the search conducted at the premises of the assessee and its directors. It is also not in dispute that no incriminating materials have come on record and all the additions and disallowances were made on the basis of 'change of opinion' made by Assessing Officer. It is also

not in dispute that initially original assessment was completed u/s 143(3) of the Act and declared income of the assessee was accepted on the basis of audited books of accounts of the assessee.

6. In the backdrop of the aforesaid undisputed facts and circumstances of the case, order passed by the lower revenue authorities and argument addressed by the Ld. Authorized Representatives of the parties to the appeal, the sole question arises for determination in this case is:-

***"As to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of such income during assessment proceedings?"***

7. The Ld. AR for the assessee challenging the impugned order contended inter alia that since the penalty levied on the basis of additions/disallowances made by the Assessing Officer is on the basis of 'change of opinion', the same is not sustainable; that AO in order to initiate the penalty proceedings prima facie failed to satisfy himself that, "as to whether the assessee has *"Concealed particulars of income or has furnished inaccurate particulars of income,"* in the show-cause notice issued under section 271(1)(c)/274 of the Act and relied upon the decision of ***Hon'ble Karnataka High Court in case of CIT vs. Manjunatha Cotton and Ginning Factory-359ITR 565 and CIT vs. SSA's***

***Emerala Meadows -73 taxmann.com 241 (kar.) (Revenue's SLP dismissed in 242 taxman 180)***

8. However, Ld. DR for the Revenue to repel the arguments addressed by the Ld. AR for the assessee company contended inter alia that the notice issued by the AO u/s 274 of the Act is not standalone document which is based on assessment order; that the notice has been issued in respect of furnishing inaccurate particulars of income and relied upon the case of ***Trimurti Engineering Works – 25 taxmann.com 363.***

9. In order to proceed further, we would like to peruse the notice issued by AO u/s 274 read with section 271(1)(c) of the Act to initiate the penalty proceedings which is extracted as under for ready perusal:-

***"NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF THE INCOME TAX ACT, 1961.***

***Income tax Office  
Central Circle***

***Dated: 29.12.2009***

***To,***

***M/s Kaveri Infrastructure Pvt. Ltd.  
B-14, Ground Floor,  
Geetanjali Enclave  
Malviya Nagar  
New Delhi-110017***

***Whereas in the course of proceedings before me for the assessment year 2008-09 it appears to me that you:-***

***\*Have concealed the particulars of your income or furnished inaccurate particulars of such income.***

***You are hereby requested to appear before me at 11.00 AM/PM on 18.01.2010 and show cause why an order imposing a penalty on you should not be made under section 271 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 representatives 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).***

***Sd/-  
(SURESH SIVANANDAN)  
Dy. Commissioner of Income Tax  
Central Circle, New Delhi.***

***Delete inappropriate words and paragraphs."***

**10.** Bare perusal of the notice issued u/s 274 read with section 271(1)(c) of the Act in order to initiate penalty proceedings against the assessee goes to prove that the AO himself was not aware as to whether he is issuing notice to initiate the penalty proceedings either for "*concealment of particulars of income*" or "*furnishing of inaccurate particulars of such income*" by the assessee rather issued vague and ambiguous notice by incorporating both the limbs of section 271(1)(c). When the charge is to be framed against any person so as to move the penal provisions against him, he/she should be specifically made aware of the charges to be leveled against him/her.

**11.** Hon'ble High Court of *Karnataka in case of CIT vs. Manjunatha Cotton and Ginning Factory* (supra) while deciding the identical issue held that when the AO has failed to issue a specific show-cause notice to the assessee as required u/s 274 read with section 271(l)(c), penalty

levied is not sustainable. The operative part of the judgment is reproduced as under:-

**"59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation 1 or in Explanation 1 (B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, 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 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 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 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 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 T Ashok Poi v. CIT [2007] 292 ITR 11 /161 Taxman 340 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 CIT v. Manu Engg. [1980] 122 ITR 306 and the Delhi High Court in the case of CIT v. Virgo Marketing (P) Ltd.***



***[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. "***

12. Hon'ble Apex Court in case of ***CIT vs. SSA's Emerala Meadows - (2016) 73 taxmann.com 248 (SC)*** while dismissing the SLP filed by the Revenue quashing the penalty by the Tribunal as well as Hon'ble High Court on ground of unspecified notice has held as under:-

***"Section 274, read with section 271(1)(c), of the Income-tax Act, 1961 - Penalty - Procedure for imposition of (Conditions precedent) - Assessment year 2009-10 - Tribunal, relying on decision of Division Bench of Karnataka High Court rendered in case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 1TR 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of assessee holding that notice issued by Assessing Officer under section 274 read with section 271 (1 )(c) was bad in law, as it did not specify under which limb of section 271 (1 )(c) penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income - High Court held that matter was covered by aforesaid decision of Division Bench and, therefore, there was no substantial question of law arising for determination - Whether since there was no merit in SLP filed by revenue, same was liable to be dismissed - Held, yes [Para 2] [In favour of assessee]"***

13. Aforesaid decisions rendered by Hon'ble Apex Court in ***CIT vs. SSA's Emerala Meadows*** (supra) and Hon'ble Karnataka High Court in ***CIT vs. Manjunatha Cotton and Ginning Factory*** (supra) are

squarely applicable to the facts and circumstances of the case as the AO has miserably failed to specify in the notice issued under section 274 read with 271(l)(c) of the Act, *"as to whether the assessee has concealed the particulars of his income or has furnished inaccurate particulars of such income"*, so in these circumstances, penalty levied by the AO and confirmed by Ld. CIT (A) is not sustainable in the eyes of law.

**14.** Moreover, the Ld. AR for the assessee brought on record the decision rendered by the Co-ordinate Bench of Tribunal in its own case for Assessment Year 2005-06, 2006-07 & 2007-08 wherein the disallowance made by the AO on account of site expenses u/s 37(1), disallowance of project consultancy expenses and technical support expenses and adhoc disallowance of site labour expenses have been deleted and issue as to the remaining disallowances of unexplained cash transactions has been restored back to the AO by the Tribunal vide order dated 16.3.2018. So, when the additions/disallowances have been deleted/remanded back to AO, penalty levied u/s 271(1)(c) is not sustainable. Even penalty levied on the assessee in AY 2005-06, 2006-07 & 2007-08 on the identical ground, which were part of the block assessment, has been deleted by the Tribunal vide order dated 04.04.2018.

**15.** More so, when additions/disallowances have been merely made on the basis of 'change of opinion', the penalty levied by the AO and confirmed by Ld. CIT(A) is not sustainable in the eyes of law.

**16.** Furthermore, the Ld. AR for the assessee contended that when the assessee has made a bonafide claim no penalty can be levied. When it is not the case of the Revenue that the Assessee has concealed particulars of income or has furnished inaccurate particulars of income rather declined the bonafide claim set out by the assessee, penalty cannot be levied. Reliance in this regard may be placed on judgment cited as ***CIT vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158 (S.C.)***.

Operative part of which is reproduced for ready reference as under:-

***"A glance at the provisions of section 271(l)(c) of the I.T. Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(l)(c) would embrace the detail of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the***

***truth or erroneous.***

***Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(I)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."***

**17.** In view of what has been discussed above, we are of the considered view that the penalty levied by the AO and confirmed by the Ld. CIT(A) is not sustainable in the eyes of law, hence ordered to be quashed. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17/7/2018

Sd/-

**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Dated: 17.07.2018  
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	10/7/2018
Date on which the typed draft is placed before the dictating Member	12/7/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	13/7/2018
Date on which the fair order is placed before the Dictating Member for pronouncement	13/7/2018
Date on which the fair order comes back to the Sr. PS/PS	18/7/2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

