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आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष **एवं**
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1.आयकरअपील सं./ I.T.A. No.5580/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2007-08)
&
2.आयकरअपील सं./ I.T.A. No.7645/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2008-09)
&
3.आयकरअपील सं./ I.T.A. No.7646/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2009-10)
&
4.आयकरअपील सं./ I.T.A. No.7647/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2010-11)
&
5.आयकरअपील सं./ I.T.A. No.7648/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2011-12)
&
6.आयकरअपील सं./ I.T.A. No.7649/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2012-13)
&
7.आयकरअपील सं./ I.T.A. No.7650/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2014-15)

M/s. Balaji Telefilms Limited C-13, Balaji House Dalia Industrial Estate New Link Road, Mumbai-400 053.	**बनाम**/ Vs.	**DCIT-4(3)** C.R -4 Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACB-4376-M		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	Shri Snehal R. Shah- Ld. AR
Revenue by	:	Ms. Bharti Singh & Ms.Kavita P.Kaushik - Ld.DRs

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Date of final Hearing	:	26/08/2020
Date of Pronouncement	:	18/09/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1.1 Aforesaid appeals, all by assessee, for Assessment Years [in short referred to as 'AY'] 2007-08 to 2012-13 & 2014-15 contest separate orders of learned first appellate authority *qua* confirmation of penalty. Since the penalty stem from common set of facts and circumstances, the appeals were heard together and now being disposed-off by way of this common order for the sake of convenience and brevity.

1.2 For ease of reference, the details of assessment framed, penalty levied etc. in various years could be tabulated in the following manner: -

AY	**Details of Quantum Assessment**	**Details of penalty levied by AO**	**Details of penalty adjudication by first appellate authority**
2007-08	143(3) r.w.s. 147 dated 31/03/2015	271(1)(c) Vide penalty order dated 28/09/2015	Appeal No. CIT(A)-52/IT/DC-CC-4(3)/113/2015-16 dated 16/06/2016
2008-09	143(3) r.w.s. 153A dated 19/05/2015	271(1)(c) Vide penalty order dated 23/11/2015	Appeal No. CIT(A)-52/IT/DC-CC-4(3)/147/2015-16 dated 01/09/2016
2009-10	143(3) r.w.s. 153A dated 19/05/2015	271(1)(c) Vide penalty order dated 23/11/2015	Appeal No. CIT(A)-52/IT/DC-CC-4(3)/148/2015-16 dated 01/09/2016
2010-11	143(3) r.w.s. 153A	271(1)(c) Vide penalty	Appeal No. CIT(A)-52/IT/DC-CC-

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	dated 19/05/2015	order dated 23/11/2015	4(3)/149/2015-16 dated 01/09/2016
2011-12	143(3) r.w.s. 153A dated 19/05/2015	271(1)(c) Vide penalty order dated 24/11/2015	Appeal No. CIT(A)-52/IT/DC-CC-4(3)/150/2015-16 dated 01/09/2016
2012-13	143(3) r.w.s. 153A dated 19/05/2015	271(1)(c) Vide penalty order dated 24/11/2015	Appeal No. CIT(A)-52/IT/DC-CC-4(3)/151/2015-16 dated 01/09/2016
2014-15	143(3) dated 19/05/2015	271AAB Vide penalty order dated 23/11/2015	Appeal No. CIT(A)-52/IT/DC-CC-4(3)/153/2015-16 dated 02/09/2016

First, we take up appeal for AY 2007-08 since the penalty has been confirmed by first appellate authority, for the first time, in this year.

ITA No. 5580/Mum/2016, AY 2007-08

2.1 Aggrieved by confirmation of penalty u/s 271(1)(c) for Rs.94,16,115/- by Ld. Commissioner of Income-Tax (Appeals)-52, Mumbai, [in short referred to as 'CIT(A)'], Appeal No. CIT(A)-52/IT/DC-CC-4(3)/113/2015-16 order dated 16/06/2016, the assessee is in appeal before us with following ground of appeal: -

1. The learned CIT(A)-52 has erred in confirming the penalty levied by the learned Assessing Officer without appreciating the fact of the case in the right perspective.

2.2 The assessee, vide petition dated 29/07/2019, has filed additional ground of appeal and pleaded for the admission of the same by submitting that the same are legal grounds and do not require appreciation of new facts. The said ground reads as under: -

2. The learned Assessing Officer has erred in levying penalty u/s 271(1)(c) of the Income Tax Act, 1961 on the ground that the validity of penalty order passed by the learned Assessing Officer u/s 271(1)(c) of the Act is bad in law and void ab initio as the notice issued u/s 274 r.w.s. 271(1)(c) of the Act is not in accordance with the law especially since he has grossly erred in not specifying the limb under which he intends to initiate penalty proceedings.

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The Ld. DR has opposed the admission of additional ground by pleading that the said ground was never raised before first appellate authority. However, considering the fact that additional ground is merely a legal ground which goes to the root of the matter and do not require appreciation of new facts, keeping in view the decisions of Hon'ble Supreme Court rendered in **National Thermal Power Co. Ltd. V/s CIT [229 ITR 383] & Jute Corporation of India Ltd. [187 ITR 688],** we admit the additional ground and proceed to adjudicate the appeal as argued before us.

2.3 Facts leading to imposition of penalty are that the assessee being resident corporate assessee stated to be engaged in Production of TV serials and films was assessed for year under consideration u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 on 31/03/2015. The assessee group, comprising-off of various entities, was subjected to search and seizure action u/s 132 on 30/04/2013 by DDIT (Investigation), Mumbai. The major allegations leveled against the assessee group were that the group had inflated their purchases by obtaining accommodation entries from bogus parties and had debited bogus consultancy and other charges. The year-wise disclosure made, in this regard, in the case of the assessee has already been tabulated at para-4.1 of the quantum assessment order framed on 31/03/2015. The perusal of the same reveal that the assessee made aggregate disclosure of Rs.32.42 Crores for block period AYs 2007-08 to 2014-15. The disclosure made for AY 2007-08 amounted to Rs.2.79 Crores.

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2.4 The original return of income was filed by the assessee on 31/10/2007 declaring income of Rs.114.43 Crores which was assessed u/s 143(3) on 05/05/2009 at Rs.114.76 Crores but finally determined at Rs.114.74 Crores after giving effect to appellate order.

2.5 Based on information captured during search operations, the case of the assessee was reopened vide issuance of notice u/s 148 on 11/02/2014. In response, the assessee filed return of income on 07/03/2014 declaring income of Rs.117.53 Crores. In other words, in the return of income, the assessee declared additional income of Rs.2.79 Crores (Rs.117.53 Crores – Rs.114.74 Crores) as disclosed during search operations on account of alleged bogus purchases & bogus payments amounting to Rs.2.68 Crores & Rs.0.11 Crores respectively. It is evident from perusal of quantum assessment order that the said returned income has been accepted by the revenue without making any further additions.

2.6 The bogus purchases were stated to be made by the assessee from various concerns controlled, operated and managed by one Shri Jagdish Mundra, an alleged entry provider. The statement of Shri Jagdish Mundra and his accountant was recorded u/s 132(4) wherein it was confirmed by them that various concerns run by Shri Jagdish Mundra were mere paper concerns involved in giving accommodation entries to various parties without supplying any material.

2.7 During the course of search proceedings, statements of key persons of assessee's group was also recorded wherein all these persons were, *inter-alia,* required to explain the standard operating

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procedure adopted by the assessee with respect to purchases made by it. Certain discrepancies were noted in the purchase documents maintained by the assessee, which have already been enumerated in page no.-7 of the assessment order. The party-wise purchases made by the assessee from various suspicious concerns have also been tabulated on page nos. 9-10 of the assessment order.

2.8 The director of assessee company, Smt. Shobha Kapoor, in statement recorded on 02/05/2013 u/s 132(4) during search operations, while answering to question no. 12 accepted the discrepancies in the documents and agreed for voluntary disclosure of these purchases in respective years and the said disclosure, in fact, has already been offered by the assessee in return of income for various years, filed during the course of assessment proceedings.

2.9 The second disclosure made by the assessee was on account of bogus consultancy charges stated to be paid against bills raised by one Shri Vijay Pal in the name of various persons. There was no written agreement for rendering of services between the assessee and Shri Vijay Pal and consequently, the bills were held to be bogus and the payments made against the same was held to be incurred for non-business purposes. The director of assessee company, Smt. Shobha Kapoor, in statement recorded on 02/05/2013 u/s 132(4) during search operations, while answering to question no.20, *inter-alia,* accepted that genuineness of the payment could not be proved in absence of supporting documents and therefore, offered to voluntary disclose the same in various AYs.

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2.10 Subsequently, the disclosure as made by the assessee on both these counts was offered in the return of income for various years which was accepted by the revenue and accordingly, the quantum issue attained finality. Consequently, penalty proceedings were initiated by learned AO in the quantum assessment order by asserting as under: -

> "Accordingly, penalty proceedings u/s 271(1)(c) are initiated separately for furnishing inaccurate particulars of income leading to concealment of income chargeable to tax."

During penalty proceedings, notice u/s 274 read with Section 271 of the Income Tax Act was issued against the assessee on the same day i.e. on 31/03/2015 which has been placed in the paper-book. Upon perusal of the same, it is noted that neither the applicable clause has been ticked-off nor the applicable limb *i.e. have concealed the particulars of income or……furnishes inaccurate particulars of such income* have been specified / mentioned. In other words, *prima-facie,* there was failure on the part of learned AO to frame a specific charge against the assessee for which the assessee was being penalized.

2.11 During penalty proceedings, the assessee *inter-alia,* pleaded that the total turnover of the assessee was Rs.328.96 Crores and the amount of disputed purchases / expenditure Rs.2.79 Crores barely constituted 0.80% of the turnover and it was practically impossible for Managing Director to abruptly certify the authenticity of the expenditure at the time of search proceedings by producing supporting documents like bills, delivery challans, lorry receipts, entries inward /outward register and to attend to a list comprising-off of almost 50 to 75 such dealers. Nevertheless, the said admission was made to buy peace with the

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Income Tax Department. The attention was drawn to the fact that tax was voluntarily paid by the assessee on 31/01/2014 which was much before the issuance of notice u/s 148 i.e. 11/02/2014 and the said notice was bad in law especially since the tax was paid strictly to maintain the spirit of the disclosure even without going into the authenticity of the documents that duly support the expenditure of Rs.2.79 Crores. It was also pleaded that all the goods / materials as referred to in the bills was actually used in the ordinary course of production of films / tele films. It was also pleaded that statement of the director was neither backed by any incriminating material or any document that would conclude that the purchases were non-genuine nor any opportunity of cross-examination of suppliers was ever provided to the assessee in contravention of settled legal position. In the above background, it was submitted that there was neither concealment of any income nor furnishing of any inaccurate particulars of income within the meaning of Section 271(1)(c) and therefore, the penalty was unjustified.

2.12 However, Ld. AO rejected the same by observing that sufficient positive material evidences were brought on record by the revenue to justify these allegations. Hence, having furnished inaccurate particulars of income by not disclosing true income would attract penalty u/s 271(1)(c) since the explanation furnished by the assessee, in defense, has not been found to be satisfactory. Reliance was placed on the decision of Hon'ble Supreme Court in **UOI V. Dharmendra Textiles 306 ITR 266** for observation that penalty u/s 271(1)(c) was a civil liability and willful concealment was not an essential ingredient to attract civil liability.

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Reliance was also placed on other decisions for the conclusion that penalty was leviable in cases where the assessee had surrendered the undisclosed income and was unable to submit any documentary evidences for the same and also in cases where the surrender was based on statement of other persons.

2.13 Finally, at para-18 of penalty order, Ld. AO proceeded to levy penalty by observing as under: -

> "18. In view of the totality of the facts of the case and keeping in view the provisions of Section 271(1)(c) and the legal precedents as discussed above, I am satisfied that the assessee has concealed his income and filed inaccurate particulars of income for the year. Therefore, a penalty u/s 271(1)(c) is levied upon the assessee for this default."

2.14 Finally, the assessee has been saddled with impugned penalty of Rs.94.16 Lacs, being 100% of tax sought to be evaded vide penalty order dated 28/09/2015.

3.1 Aggrieved, the assessee preferred further appeal before first appellate authority and again drew attention to the fact that the purchased goods were actually used in the ordinary course of production of films and telefilms and the purchases were duly supported by purchase registers, the payment to suppliers was through banking channels, the suppliers were having VAT No. / PAN and similar other registrations and the purchased goods were duly entered in the Goods inward register. The attention was also drawn to the fact that surrender was not backed by any incriminating material or document which would conclude that the purchases were non-genuine and no opportunity of cross-examining the suppliers was ever provided to the assessee in

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violation of principle of natural justice. Reliance was placed on the decision of Indore Tribunal rendered in Radheshyam Sarda V/s ACIT for the submissions that once the revised ROI has been regularized by the revenue, the assessee's explanation that he had declared the additional income to buy peace had to be treated as bona fide and penalty u/s 271(1) (c) could not be levied.

3.2 However, the said pleas could not find favor with first appellate authority. The Ld. CIT(A) after appreciating the factual matrix, at para-8, invoked explanation 5A to Section 271(1) (c) for the first time and concluded that with effect from 01/06/2007, the assessee does not get any immunity from penalty even if he surrenders such income during the course of the search and even if such income is included in the return of income filed subsequent to the date of search and penalty has to be necessarily levied.

3.3 Reliance was placed on the decision of Hon'ble Supreme Court rendered in **Mak Data V/s CIT 358 ITR 593** to conclude that the burden was on assessee to refute the allegations by cogent and reliable evidences. Finally, the stand of learned AO in imposing the penalty was upheld, which has given rise to second appeal before us.

4.1 The learned Authorized representative for Assessee (AR), at the outset, drew our attention to the additional grounds of appeal and raised a legal plea to submit that failure to frame specific charge against the assessee would vitiate the penalty proceedings and therefore, the penalty order was bad in law as per various binding judicial precedents. Our attention has been drawn to the fact that penalty was initiated on

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both counts / limbs viz. concealment of income as well as for furnishing of inaccurate particulars of income, which as per settled legal position carry different connotation /meaning. It has further been submitted that show-cause notice issued u/s 274 r.w.s 271 on 30/03/2015 was a vague notice in a printed form without striking-off irrelevant portion and did not specify the exact charge for which the assessee was being penalized and therefore, it was a clear case of non-application of mind while initiating penalty against the assessee. The two limbs viz. concealment of income and furnishing of inaccurate particulars of income, as per submissions of Ld. AR, were separate charges and non-framing of specific charges would vitiate the penalty proceedings. Our attention is further drawn to the penalty order to submit that the penalty has finally been levied by learned AO invoking both the limbs which is not tenable in law in view of catena of binding judicial precedents including the decision of Hon'ble Karnataka High Court in **CIT V/s Manjunatha Cotton & Ginning Factory 359 ITR 565.** In the light of these submissions, it has been submitted that the AO has to apply his mind as to specific charge which was being invoked against the assessee and non-application of mind would make the penalty proceedings void-ab-initio and hence, would be liable to be quashed. The said submissions have further been fortified by submitting that the learned first appellate authority invoked Explanation 5A for the first time, during appellate proceedings which would show complete non-application of mind on the part of lower authorities while levying penalty against the assessee.

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Reliance has been placed on following judicial precedents in support of legal submissions: -

No.	Case Law	Judicial Authority	Citation
1.	CIT V/s SSA's Emerald Meadows	Hon'ble Supreme Court	73 Taxmann.com 248 SLP dismissed on 05/08/2016
2.	Shri Samson Perinchery	Hon'ble Bombay High Court	ITA No. 1154 of 2014 & Ors.
3.	Mrs. Piedade Perinchery	Hon'ble Bombay High Court	ITA No. 1310 of 2014 dated 10/10/2017
4.	Muninaga Reddy V/s ACIT	Hon'ble Karnataka High Court	88 Taxmann.com 545 21/09/2016
5.	New Sorathia Engg. Co. V/s CIT	Hon'ble Gujarat High Court	155 Taxman 513 25/01/2016
6.	Balaji Motion Pictures Ltd. V/s DCIT	ITAT, Mumbai	ITA 7643/Mum/2016 dated 03/01/2018
7.	Cenzar Industries Ltd. V/s ITO	ITAT, Mumbai	ITA No. 1970/Mum/2015 dated 29/12/2017
8.	YKM Holding Pvt. Ltd. V/s ITO	ITAT,Delhi	ITA No. 2174/Del/2016 dated 12/10/2018
9.	Orbit Enterprises V/s ITO	ITAT, Mumbai	ITA Nos. 1596-97/Mum/2014 dated 01/09/2017
10.	Meherjee Cassinath Holdings Pvt. Ltd.	ITAT, Mumbai	ITA No. 2555/Mum/2012 dated 28/04/2017
11.	Financial Technologies (I) Ltd. V/s ACIT	ITAT, Mumbai	61 Taxmann.com 406 04/03/2015
12.	Radhey Shyam Mittal V/s DCIT	ITAT, Jaipur	88 Taxmann.com 336 04/01/2015
13.	Rohini Ranjeet Mulay V/s DCIT	ITAT, Pune	79 Taxmann.com 213 30/01/2017
14.	Jehangir HC Jehangir	ITAT, Mumbai	ITA No. 1261/Mum/2011 dated 17/05/2017

Our attention has specifically been drawn to the order of Tribunal tabulated at serial no.6 to submit that penalty, on similar factual matrix, levied on assessee's group concern has already been deleted by the Tribunal and therefore, facts being pari-materia the same, the ratio of said decision should be followed in the present case also.

4.2 Proceeding further, Ld. AR submitted that no incriminating material was found during search operations and the sole reliance of the revenue is based on incriminating statement of a third person namely Shri Jagdish Mundra which was recorded at the back of the assessee and the

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same was never confronted to the assessee and no opportunity of cross-examination was ever provided to the assessee, which was in gross violation of principle of natural justice. However, the fact remains that revenue was not in possession of any incriminating material which would corroborate those third-party statements. The assessee made a voluntary disclosure to avoid further litigation and the disclosure, *in toto,* has been accepted by the revenue. In the said background, Ld. AR asserted that the penalty was unjustified, under the given circumstances.

4.3 Lastly, Ld. AR submitted that the returned income filed by the assessee has been accepted by the revenue and due taxes were paid even before issuance of notice u/s 148 and therefore, the penalty was not justified from this angle also since there was no concealment of income or furnishing of inaccurate particulars in the return of income furnished by the assessee.

4.4 The Ld. Departmental Representative, on other hand, submitted that surrender / disclosure was made only pursuant to search proceedings and therefore, the penalty was clearly leviable in terms of Explanation 5A. Reliance has been placed on various observations / findings given by lower authorities while levying / confirming the penalty.

5.1 We have carefully heard the rival submissions, perused relevant material on record, carefully gone through the fact as enumerated in the preceding paragraphs and deliberated upon various judicial pronouncements as cited / relied upon by both the sides during the course of hearing before us.

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5.2 So far as the legal grounds are concerned, it is evident from observation of Ld. AO as extracted in para-2.10 above, that penalty was initiated against the assessee, in the quantum assessment order, on both the charges i.e. concealment of income as well as for furnishing of inaccurate particulars of income which would show that Ld. AO was not clear as to specific limb which was applicable to given factual matrix. This is further fortified by the fact that exact charge has not been framed even while issuing notice u/s 274 r.w.s. 271 of Act which has been issued in plain printed form without ticking / marking the applicable clause as well as without striking-off the irrelevant limb. This conclusion draws all the more strength upon perusal of penalty order wherein penalty has finally been levied on both the limb which is evident from para-18 of the penalty order, which has already been extracted by us in preceding para 2.13. The aforesaid three events, put together, reveal that the penalty was initiated as well as levied for both the charges.

5.3 It is apparent that if Ld. AO, in the course of assessment proceedings, was satisfied that the assessee has concealed the particulars of income or furnished inaccurate particulars of such income, then he may levy penalty on the assessee. However, in our considered opinion, concealment of particulars of income or furnishing of inaccurate particulars of income, are two different charges. These two expressions i.e. *furnishing of inaccurate particulars and concealment of income,* in terms of ratio of binding judicial precedents, carry different connotation / meaning and non-framing of specific charge against the assessee would vitiate the penalty proceedings. The penalty could be levied only for a

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specific charge. Furnishing of inaccurate particulars of income means, when the assessee has not disclosed the particulars correctly or the particulars disclosed by the assessee are found to be incorrect whereas, concealment of particulars of income would mean that the assessee has concealed the income and has not reflected certain income in its return of income.

5.4 For the said proposition, we straightway rely upon the decision rendered by Hon'ble Bombay High Court rendered in **CIT Vs. Samson Perinchery [2017 88 taxmann.com 413]** wherein Hon'ble Court has held as under: -

> **3.** The impugned order of the Tribunal deleted the penalty imposed upon the Respondent-Assessee. This by holding that the initiation of penalty under Section 271 (1)(c) of the Act by Assessing Officer was for furnishing inaccurate particulars of income while the order imposing penalty is for concealment of income. The impugned order holds that the concealment of income and furnishing inaccurate particulars of income carry different connotations. Therefore, the Assessing Officer should be clear as to which of the two limbs under which penalty is imposable, has been contravened or indicate that both have been contravened while initiating penalty proceedings. It cannot be that the initiation would be only on one limb i.e. for furnishing inaccurate particulars of income while imposition of penalty on the other limb i.e. concealment of income. Further, the Tribunal also noted that notice issued under Section 274 of the Act is in a standard proforma, without having striked out irrelevant clauses therein. This indicates non-application of mind on the part of the Assessing Officer while issuing the penalty notice.
>
> **4.** The impugned order relied upon the following extract of Karnataka High Court's decision in CIT v. Manjunatha Cotton & Ginning Factory[2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250 to delete the penalty:—
>
> > "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 as case of furnishing of inaccurate particulars. The apex court in the case of Ashok Pai[2007] 292 ITR 11 (SC) 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 Manu Engineering reported in 122 ITR 306 and the Delhi High Court in the case of Virgo Marketing P. Ltd., reported in 171 Taxman 156, has held that levy of penalty

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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."

5. The grievance of the Revenue before us is that there is no difference between furnishing of inaccurate particulars of income and concealment of income. Thus, distinction drawn by the impugned order is between Tweedledum and Tweedledee. In the above view, the deletion of the penalty, is unjustified.

6. The above submission on the part of the Revenue is in the face of the decision of the Supreme Court in T. Ashok Pai v. CIT[2007] 292 ITR 11/161 Taxman 340 [relied upon in Manjunath Cotton & Ginning Factory (supra)] - wherein it is observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act, carry different meanings/connotations. Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under Section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other breach. This is more so, as an Assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the Assessee has no notice.

7. Therefore, the issue herein stands concluded in favour of the Respondent-Assessee by the decision of the Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory (supra). Nothing has been shown to us in the present facts which would warrant our taking a view different from the Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory (supra).

8. In view of the above, the question as framed do not give rise to any substantial question of law. Thus, not entertained.

9. Accordingly, all these Appeals are dismissed. No order as to costs.

It is evident that Hon'ble Court, in the above decisions, has confirmed the ratio laid down by Hon'ble Karnataka High Court in **CIT V/s Manjunatha Cotton & Ginning Factory (359 ITR 565).** This decision of Hon'ble Karnataka High Court was subsequently followed by the same court in the case of **CIT V/s SSA's Emerald Meadows (2016 73 Taxmann.com 241)** which was agitated by the revenue before Hon'ble Supreme Court. However, Special Leave Petition, against the same, was dismissed by the Hon'ble Court on 05/08/2016 reported at 73 Taxmann.com 248. This decision of Hon'ble Karnataka High Court

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rendered in Manjunatha Cotton & Ginning Factory has subsequently been followed extensively in catena of judicial pronouncements rendered by various Hon'ble High Courts as well as different benches of Tribunal, few of which have already been tabulated by us in preceding para 4.1 of the order.

5.5 Following the same decision, Hon'ble Karnataka High Court, in its later decision titled as **Muninaga Reddy V/s ACIT (88 Taxmann.Com 545 21/09/2016)** observed as under: -

> **7.** We may record that during the course of hearing the learned counsel for the appellant has tendered the copy of notice issued to the assessee under Section 271(1)(c) of the Act dated 15.12.2008 for imposition of penalty, which as per the learned counsel for appellant was a part of record in the proceedings before the Tribunal. Learned counsel for the respondent - revenue is unable to dispute that notice dated 15.12.2008 was issued by the Department for imposition of penalty under Section 271(1)(c) of the Act. Hence, said notice for the purpose of consideration is taken on record. Said notice disclose that it is a printed notice and further no specific ground is mentioned, which may show that the penalty could be imposed on the particular ground for which said notice was issued. If the decision of this Court in case of *Manjunatha Cotton & Ginning Factory* (*supra*) is considered, this Court in the said decision had observed at paragraph 63 as under:
>
> "63. In the light of what is stated above, what emerges is as under:

(*a*)		Penalty under Section 271(1)(c) is a civil liability.
(*b*)		Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.
(*c*)		Willful concealment is not an essential ingredient for attracting civil liability.
(*d*)		Existence of conditions stipulated in Section 271(1)(c) is a sine qua non for initiation of penalty proceedings under Section 271.
(*e*)		The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.
(*f*)		Ever if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in Explanation 1(A) & 1(B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

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(*g*)	Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).
(*h*)	The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.
(*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 IB 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.

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(*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 assessment or reassessment cannot be declared as invalid in the penalty proceedings."

8. We are not required to consider the other contingencies for examination of legality and validity of the penalty under Section 271(1)(c) of the Act, but clauses (p), (q) & (r) of the above referred observations are required to be considered.

9. 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 said penalty proceedings is being initiated. 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 violated.

10. In our view, if the observations made by this Court in the above referred decision and more particularly clauses (p), (q) and (r) 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 *Manjunatha Cotton & Ginning Factory* (*supra*) would not apply.

11. In view of the aforesaid discussion, if the decision of this Court in case of *Manjunatha Cotton & Ginning Factory* (*supra*) is considered, the resultant effect would be that the notice in question issued under Section 271(1)(c) for levy of penalty and consequently the penalty imposed, both would be unsustainable and cannot stand in the eye of law.

It has been held by Hon'ble Court that the notice would have to specifically state the ground mentioned in Section 271 (1)(c) of the Act namely as to whether the penalty was for concealment of income or furnishing of incorrect particulars of the income. Further, issuing printed form would not satisfy the requirement of law since the assessee should know the ground which he has to meet specifically otherwise the

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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. We find that similar is the case here since appropriate limb has not been specified in the subject notice and therefore, the principles of natural justice could be said to be have been violated. More or less, similar proposition has been laid in other binding judicial precedents as tabulated by us.

5.6 In other words, failure to frame specific charge against the assessee during penalty proceedings would be fatal to penalty proceedings itself and the same could not be sustained in the eyes of law. The revenue is unable to demonstrate that specific charge was ever framed and confronted to the assessee during penalty proceedings. Therefore, respectfully following the binding judicial precedents favoring the assessee, on the issue, we find substantial force in legal grounds raised by Ld. AR, in this regard.

5.7 For the aforesaid reasons, the provisions of Explanation-5A to Section 271(1)(c), as invoked by learned first appellate authority for the first time, which were never invoked by Ld. AO and which was never confronted to the assessee during penalty proceedings, could also not be sustained. Moreover, the condition of framing of specific charge, in any case, was required to be fulfilled before invoking Explanation 5A against the assessee.

5.8 Proceeding further, we find that one of the sister concerns of the assessee group, which was also covered under same search proceedings was saddled with penalty on similar circumstances. The co-

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ordinate bench of the Tribunal, while adjudicating the assessee's appeal titled as Balaji Motion Pictures Ltd. V/s DCIT, ITA No. 7643/Mum/2016 order dated 03/01/2018, deleted the penalty in view of the fact that the incriminating statement made by Shri Jagdish C. Mundra, was never confronted to the assessee and no opportunity of cross-examination was provided to the assessee. The bench, in concluding para, observed that the revenue had to show by positive material that the assessee had furnished inaccurate particulars of income or concealed the particulars of income. Except for the incriminating statement of Shri Jagdish C. Mundra, there was nothing in possession of the revenue to incriminate the assessee. Although, we have noted that the aforesaid decision has been rendered on peculiar facts of that case and the ratio of the same is not applicable here, as specified by the bench in concluding lines, however, we find that factual matrix to be identical here also which is evident from basic facts already enumerated by us in the opening paragraphs. Therefore, we concur with the principle laid down by the co-ordinate bench in that decision and inclined to follow the same here also, factual matrix being identical.

5.9 In view of the aforesaid discussion, we hold that impugned penalty was unsustainable in the eyes of law and therefore, we direct for deletion of the same.

5.10 Since the penalty has been deleted on legal grounds, the other arguments of the assessee including arguments on merits assailing impugned penalty are not being dealt with as the same have been rendered academic in nature.

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5.11 In the result, the appeal stands allowed.

Appeals for AYs 2008-09 to 2012-13

6. Facts are pari-materia the same in all these years except for the fact that assessment has been framed u/s 143(3) r.w.s. 153A of the Act wherein returned income filed by the assessee has been accepted by the revenue. The penalty has been initiated, levied as well as confirmed on similar factual matrix. The penalty has been initiated in the quantum assessment order on similar lines, the notice issued u/s 274 r.w.s. 271 is pari-materia the same and the penalty has finally been levied under both the limbs, in similar manner. The assessee has raised similar additional legal grounds in all the appeals. Nothing on record point out any distinguishing features. Therefore, facts being pari-materia the same, our observations, adjudication as well as conclusion in all these years, as for AY 2007-08, shall *mutatis-mutandis* apply to all these years also. Accordingly, the penalty levied by revenue u/s 271(1)(c) in all these years stand deleted. All the appeals stand allowed, in the like manner.

Appeal for AY 2014-15

7.1 This AY pertains to financial year in which the search was conducted in the case of the assessee i.e. on 30/04/2013. Accordingly, the assessment was framed u/s 143(3) on 19/05/2015 accepting the returned income of Rs.8.78 Crores filed by the assessee on 15/11/2014. Nevertheless, penalty proceedings were initiated u/s 271AAA while framing the assessment. The notice u/s 274 read with Section 271AAA

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was issued to the assessee on 19/05/2015 in similar manner, without specifying the exact charge. However, penalty has finally been levied for Rs.11,240/- u/s 271AAB vide penalty order dated 23/11/2015. The same, upon confirmation by learned first appellate authority, is under challenge before us.

7.2 Going by the enumeration of facts, it is quite evident that beside failure to frame specific charges against the assessee, the penalty was initiated u/s 271AAA in the quantum assessment order whereas the same has finally been levied u/s 271AAB which would show non-application of mind on the part of Ld. AO to factual matrix of the case. It is noted that the penal provisions of Sections 271AAA were not, at all, applicable to the facts of the case since the search was conducted on the assessee after 01/07/2012. Therefore, from any angle, the penalty would not be sustainable in the eyes of law. By deleting the same, we allow the appeal.

Conclusion

8. All the appeal stands allowed in terms of our above order.

Order pronounced in the open court on 18th September, 2020.

Sd/-	**Sd/-**
(Mahavir Singh)	**(Manoj Kumar Aggarwal)**
उपाध्यक्ष / **Vice President**	लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 18/09/2020
Sr.PS, Jaisy Varghese

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai.**