IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.234/Hyd/2022		
Assessment Year: 2012-13		
Moola Padmaja 8-1-293/A/74/A Dwaraka Nagar Colony Narayanamma Engineering College, Raidurg Hyderabad-500 008 PAN : AOIPP2482B	Vs.	ACIT,CC-3(2) 7th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004

ITA No.235/Hyd/2022		
Assessment Year: 2012-13		
Vinod Aerakula B-109, Western Plaza Hussain shahwali Darha Shaikpet, Hyderabad Telangana PAN : AOOPA5855R	Vs	ACIT,CC-3(2) 7th Floor Aaykar Bhawan Basheer Bagh Hyderabad-500 004
(Appellant)		(Respondent)
Assessee by:	Shri K.C.Devdas, CA	
Revenue by:	Shri K.P.R.R.Murthy, Sr.AR	
Date of hearing:	15.02.2023	
Date of pronouncement:	22.02.2023	

O R D E R

Per Shri Rama Kanta Panda (A.M.):

The above two appeals filed by the respective assessees are directed against the separate orders dated 31.03.2022 and 27.3.2022 respectively of the Learned CIT(A) (Appeals)-11, Hyderabad relating to AY 2012-13. Since identical grounds have been raised by the respective assessees, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

ITA No.235/HYD/2022 for AY 2012-13 (VINOD AERAKULA)

2. Facts of the case, in brief, are that the assessee is an individual and co-owner of a parcel of land admeasuring acres 6.08 guntas in survey Nos. 14, 20, 21, 22 and 23 situated at Dargah Hussain Shahwali(v), Serlingampally(M), Ranga Reddy district. The assessee along with other co-owners entered into a land development agreement with M/s. Western Constructions on 03.05.2007. As per the supplementary development agreement dated 26.03.2010 the landlords were supposed to get 40% of the total built up area of 10,35,565/- sq.ft. Accordingly, capital gains will arise in the hands of the assessee on sale of individual flats. A search and survey operation u/s. 132 of I.T.Act was conducted in the group case of Sri Arakula Vinod and others on 09.05.2018. The Assessing Officer on perusal of the records and returns of income, noted that assessee failed to file his return of income for the AY 2012-13 admitting the income under the head capital gains as accrued in his hands relevant to AY 2012-13. Accordingly, notice u/s. 148 for the AY 2012-13 was issued on 26.03.2019. In response to the notice the assessee filed return of income on 03.10.2019 declaring total income of Rs.1,84,41,140/-.

3. The AO issued statutory notices u/s. 143(3) and 142(1) of the Act to which the AR of the assessee appeared before the AO from time to time and filed the requisite details. The AO thereafter completed the assessment u/s. 143(3) r.w.s. 147 of the I.T.Act on 09.12.2019 accepting the returned income of Rs.1,84,41,136/-.

4. Subsequently, the AO initiated penalty proceedings u/s. 271(1)(c) of the I.T.Act and asked the assessee to explain as to why penalty should not be levied u/s. 271(1)(c) of the I.T.Act submitted that he has neither concealed the income nor submitted inaccurate particulars of income since the assessee

disclosed the income and filed the return under the provisions of section 148 of the I.T.Act and such income has been accepted.

5. However, the AO was not satisfied with the arguments advanced by the assessee. He noted that had the department not reopened the case of the assessee by issuing notice u/s. 148 of the I.T.Act, the assessee would not have filed the return of income. He further noted that the Joint Development Agreement (JDA) has been considered and taxed by the AO on the capital gains accrued to the assessee on the land given for development in the group case in the year of execution of the JDA. Subsequent to the capital gains accrued to the assessee as per JDA, the additional/further capital gains accrue to the assessee on the sale of individual flats to third party. Accordingly, capital gains will arise in the hands of the assessee on sale of individual flats which was computed at Rs.1,84,41,136/-. The AO accordingly held that there is a clear-cut concealment of particulars of income for the relevant assessment year. Since the assessee had not filed the return of income, it clearly falls within the ambit of provisions of section 271(1)(c) of the I.T.Act by which the assessee concealed the taxable income. He accordingly levied penalty of Rs.37,61,793/- being 100% of the tax sought to be evaded u/s. 271(1)(c) of the I.T.Act.

6. Before the ld.CIT(A), the assessee made elaborate arguments. It was submitted that there was no addition made to the returned income and thus, there is no concealment and therefore, penalty is not leviable. It was argued that for levying penalty u/s. 217(1)(c) of the I.T.Act, the concealment of income has to be in the return filed by the assessee. Since the assessee admitted income voluntarily in the return filed which was accepted, therefore, there is no question of any concealment of such

income. Various decisions were also brought to the notice of the ld.CIT(A).

7. However the ld.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld by the penalty levied by the AO. While doing so, he noted that in the instant case, the assessee has not filed the return u/s. 139 of the Act but filed the return in consequence to the notice issued u/s. 148 of the I.T.Act. Further, the assessee has not furnished any bonafide reply within the meaning of Explanation 1 to section 271(1)(c) of the I.T.Act. Relying on various decisions, the ld.CIT(A) upheld the penalty levied by the AO.

8. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal.

> *1. The Hon'ble commissioner of Income Tax (Appeals) has erred both on facts of the case and in law involved in so far as it is prejudicial to the interest of the Appellant.*
>
> *2.The Hon'ble CIT(A) without taking into consideration the information filed before him proceeded to complete the appeal u/s.250 of the 1T Act and the same is not sustainable.*
>
> *3. The Hon'ble CIT(A) ought to have appreciated that the appellant had filed the return of income and had disclosed the property transaction resulting in capital gain in the return of income filed u/s 148 of the 1T Act.*
>
> *4. The Hon'ble CIT(A) should have considered that this is a case which falls under explanation 1 to section 271 (1) (c) as the appellant had furnished all the particulars necessary for the computation of income was under a bonafide belief.*
>
> *5. The Hon'ble CIT(A) ignored the explanations given by the appellant and proceeded to confirm the order of assessing officer arbitrarily and such action of the Hon'ble CIT(A) has no basis and therefore the same is liable to be deleted.*
>
> *6. To modify the Grounds raised or to raise any other Ground(s) not raised with the permission of the Honorable Members of the Income Tax Appellate Tribunal.*

9. The learned Counsel for the assessee strongly challenged the order of the ld.CIT(A) in sustaining the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act. The ld.counsel for the assessee, at the outset, submitted that the returned income has been accepted and therefore, there is neither concealment of any particulars of income nor furnishing of inaccurate particulars thereof. Referring to the notice issued u/s. 274 r.w.s. 271(1)(c) of the I.T.Act, 1961 dated 10.12.2019, copy of which is placed at page no. 1 of the paper book, he submitted that the AO in the instant case has initiated penalty proceedings on account of concealment of particulars of income and furnishing of inaccurate particulars of such income. He submitted that there cannot be levy of penalty for both the limbs i.e. concealment of income and furnishing of inaccurate particulars of income.

10. Referring to the decision of Hon'ble AP High Court in the case of Chennakesava Pharmaceuticals vs. CIT reported in 349 ITR 196, he submitted that the Hon'ble High Court in the said decision has held that the AO should, before imposing penalty, record in the assessment order his satisfaction that the assessee had either concealed the income or furnished inaccurate particulars of income in his return.

11. Referring to the decision of Hon'ble AP High Court in the case of PCIT vs Smt. Baisetty Revathi reported in 398 ITR 88, he submitted that the Hon'ble High Court in the said decision has held that when charge against assessee is either concealment of particulars of income or furnishing of inaccurate particulars thereof, revenue must specify as to which one of two is sought to be pressed into service and cannot be permitted to club both by interjecting one or between two.

12. Referring to the decision of Hon'ble AP High Court in the case of CIT vs Lotus Constructions reported in 370 ITR 475, he submitted that the Hon'ble High Court in the said decision has held that where intention or satisfaction to initiate penalty proceedings u/s. 271(1)(c) of the I.T.Act was not evident from order of the assessment, initiation of said proceedings was untenable.

13. Referring to the decision of Hon'ble Karnataka High Court in the case of CIT vs Manjunatha cotton and Ginning Factory reported in 359 ITR 565, he submitted that the Hon'ble High Court in the said decision has held that the imposition of penalty is not automatic. It has been held that penalty cannot be imposed merely because assessee accepted assessment order levying tax and interest, unless it is discernible from the assessment order that addition was on account of concealment.

14. Referring to the said decision, he drew the attention of the Bench to para 63 of the order and submitted that notice u/s. 274 of the Act should specifically state the grounds mentioned in section 271(1)(c) of the I.T.Act i.e whether it is for concealment of income or for furnishing of inaccurate particulars of income. The ld.counsel for the assessee drew the attention of the Bench to the various parameters laid down by the Hon'ble High Court at para 63 of the order which are 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) Even 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) & (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(1)(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 1B 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.

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.

15. Referring to the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs. State of Orissa reported in 83 ITR 26, he submitted that the Hon'ble Supreme Court in the said decision has held that penalty is not to be imposed if there is no conscious breach of law. It has been held in said decision that penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest or acted in conscious disregard to its obligation. Further, it has also been held that penalty will not also be imposed merely because it is lawful to do so. The Hon'ble Supreme Court has held that whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances. He submitted that

when the return of income filed in response to notice u/s. 148 has been accepted, therefore, the revenue authorities are not justified in levying penalty u/s. 271(1)(c) of the I.T.Act, 1961 and ld.CIT(A) is not justifiable sustaining the same. He also relied on various other decisions filed in the paper book and written submissions.

16. The ld.DR on the other hand heavily supported the order of the AO and the ld.CIT(A). He submitted that the assessee in the instant case was a non filer of return of income and only due to issue of notice u/s. 148 filed the return of income declaring total income of Rs.1,84,41,136/- which has been accepted by the AO. He submitted that had the department not initiated the reassessment proceedings, the assessee would not have declared its income, since the statutory due date for filing of the return had elapsed. Referring to the conduct of the assessee in the past also, he submitted that the assessee was also a non-filer. The ld.DR drew the attention of the bench to para 7 of the penalty order which reads as under:-

> *7. A search and seizure operation was conducted u/s. 132 of the I.T.Act. In this group case on 09.05.2018 and the assessee, Sri Arakula Vinod was covered under search operation u/s. 132 of the Act. During the search operations, it was found that the assessee is a non-filer and has concealed the capital gains income on the land given for development to M/s. Western Constructions vide Joint Development Agreement entered on 03.05.2007 between assessee and her family members as the landlords and M/s. Western Constructions as the developer of the said land and on the sale of such developed individual flats a sold by assessee in subsequent years.*

17. Referring to Explanation 3 to proviso of section 271(1)(c) he submitted that it is a clear case of concealment of income and therefore, the AO was fully justified in levying penalty u/s. 271(1)(c) of the I.T.Act and the ld.CIT(A) is fully justified sustaining the penalty so levied by the AO.

18. So far as the arguments advanced by the learned Counsel for the assessee that the AO has initiated penalty proceedings u/s. 271(1)(c) of the I.T.Act, 1961 for concealment of income and furnishing of inaccurate particulars of income as per the notice and that the penalty cannot be levied u/s. 271(1)(c) of the Act for both the limbs is concerned, the ld.DR referring to the decision of Hon'ble AP High Court in the case of CIT vs. Chandulal reported in 152 ITR 238 submitted that the Hon'ble High Court in the said decision has held that where assessee clearly understood the nature of offence alleged against him, notice issued u/s 274 would not be invalid simply because ITO failed to strike off inappropriate portion of language in said notice describing alleged offence. Referring to para 8 and 9 of the order of the Hon'ble High court, the ld.DR submitted that the Hon'ble High court in the said decision has held that mere non striking off of the inappropriate portions in a notice does not render the notice automatically invalid.

19. Referring to the decision of Hon'ble AP High Court in the case of Sreenivasa Pitty & Sons vs. CIT reported in 173 ITR 306, he submitted that the Hon'ble High court in the said decision has held that even though the notice was defective, the assessee understood the notice as one for levy of penalty under section 271(1)(c) of the Act and sent a reply on which the penalty was levied. Therefore, no prejudice was caused to the assessee by the defective nature of the notice as he had full opportunity before the ITO to set out his defense against the levy of penalty u/s. 271(1)(c) of the I.T.Act.

20. Referring to the decision of the Mumbai Bench of the Tribunal in the case of Earthmoving Equipment Service Corporation vs. DCIT reported in 166 ITD 113, he submitted that the Tribunal in the said decision after considering the decision of

Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory and various other decisions held that penalty could not be deleted merely on the basis of defects in the notice and the provisions of section 292B come to the rescue of the revenue which cures minor defect in the various notices issued provided such notice in substance and effect was in conformity with the intent and purpose of the Act.

21. The learned DR submitted that the assessee in the instant case was duly put to notice by the AO, the assessee has replied to such notice and thereafter, the AO has levied penalty u/s. 271(1)(c) of the I.T.Act, 1961. Under these circumstances, the penalty cannot be cancelled merely on account of defect in the notice. So far as the various decisions of the Hon'ble AP High Court relied on by the Learned Counsel for the assessee are concerned, he submitted that in the later decisions where penalty has been cancelled for non-striking off of the inappropriate words in the notice, the Benches have not considered the earlier decisions of the Hon'ble High Court, since these were neither cited nor brought to the notice of the Hon'ble High Court. Therefore, the subsequent decisions cannot be followed, since they have not considered the earlier decisions of the same High Court. He accordingly submitted that the penalty levied by the AO and sustained by the ld.CIT(A) should be upheld and the grounds raised by the assessee should be dismissed.

22. We have considered the rival arguments made by the both the sides, perused the orders of the AO and the ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case was a non-filer of income tax return for the impugned assessment year and on the basis of notice

issued u/s. 148 of the Act, the assessee filed the return of income on 03.10.2019 declaring total income of Rs. 1,84,41,136/- which was accepted by the AO. We find subsequently the AO initiated penalty proceedings u/s. 271(1)(c) of the I.T.Act and levied penalty of Rs.37,61,793/- being 100% of the tax sought to be evaded u/s. 271(1)(c) of the I.T.Act which has been upheld by the ld.CIT(A). It is the submission of the ld.counsel for the assessee that the returned income has been accepted by the AO and therefore, there is neither concealment of income nor furnishing of inaccurate particulars of income and therefore, penalty could not have been levied u/s. 271(1)(c) of the I.T.Act. The alternate argument of the ld.counsel for the assessee is that since according to the notice issued by the AO, the assessee has concealed the particulars of income and furnished inaccurate particulars of such income, therefore, such penalty cannot be levied for both the limbs and since the AO has not levied for any particular limb as per provisions of section 271(1)(c) of the I.T.Act, therefore, such penalty so levied being not in accordance with law has to be cancelled.

23. We do not find any force in the above argument of the ld.counsel for the assessee. We find Explanation 3 to section 271(1)(c) reads as under:

> *"Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish u/s 139 in respect of any A.Y commencing on or after 1st of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause(i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the CIT(A) is satisfied that in respect of such A.Y such person has taxable income, then such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such A.Y, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice u/s 148".*

24. A perusal of the assessment order as well as penalty order clearly shows that the assessee was a non-filer and only on the basis of issue of notice u/s. 148 of the Act, the assessee filed the return of income declaring income of Rs.1,84,41,136/- which has been accepted by the AO. In our opinion, had the AO not issued notice u/s. 148, the assessee would not have filed the return of income, especially considering the past conduct of the assessee and therefore, it is a clear case of concealment of income as per Explanation 3 to section 271(1)(c) of the I.T. Act. Therefore, penalty in our opinion was rightly levied by the AO and sustained by the ld.CIT(A).

25. So far as the argument of the ld.cousnel for the assessee that the AO has levied penalty for both concealment of income and furnishing of inaccurate particulars of income which he could not have done and therefore, the notice being defective such penalty should be cancelled is concerned, we find the argument of the ld.counsel for the assessee ought to be rejected outright. We find the Hon'ble AP High Court in the case of CIT vs. Chandulal (supra) while deciding an identical issue at para no. 8 and 9 of the order has observed as under:-

> *8. We are unable to subscribe to the view that by reason of the ITO not striking out inappropriate portions of the notice issued under s. 274, the notice issued was rendered invalid. In the first place, it has to be borne in mind that the notice issued under s. 274 is not prescribed under the rules. It is a notice administratively devised for the purpose of putting the assessee in the knowledge of the fact that the ITO initiated proceedings for levy of penalty in order to enable him to show cause why penalty should not be levied. So long as the object of putting the assessee in the awareness and knowledge of the initiation of the penalty proceedings is accomplished by the issuance of a notice, the question of invalidity does not arise on account of either inappropriate language in the notice or on account of any inappropriate portions of the notice not being stuck off. There was no offence to any of the rules prescribed in as much as the notice is given to secure the assessee's explanation to fulfil the requirement of natural justice. It is not in dispute that the assessee did not entertain any doubt in his mind when he received the notice issued by the ITO under s. 274. If the assessee was under a mistaken view about the real intent and effect of the notice issued, he could have asked the ITO to clarify whether the penalty proceedings were initiated for concealment of income or for*

furnishing inaccurate particulars of such income. In the present case, it is not denied that in the explanation given to the ITO in response to the notice issued under s. 274, the assessee did not raise any objection on the ground that the notice did not convey the nature of offence committed by him. No objection was also taken regarding the validity of the notice on that ground. It is, therefore, clear that the assessee was not under any misapprehension about the offence alleged against him. There was proper understanding and indeed, in the explanation filed, the assessee dealt with the reasons for contending that no penalty could be levied under s. 271(1)(c). It was not shown to us that any prejudice was caused to the assessee on account of the assesseee not being put in the knowledge of the nature of offence committed by him. The contention regarding the validity of the notice was urged only during the course of the appeal before the Tribunal and it seems to us that the explanation was only an after-thought. The assessee certainly understood the offence alleged against him and showed cause to the ITO by pointing of s. 274 would apply not only to concealment of income but also for furnishing inaccurate particulars of such income and where the offence is two-fold, there is no need on the part of the ITO to strike off any inappropriate portions. In the present case, the offence alleged against the assessee is that there is concealment of income and furnishing of inaccurate particulars of such income. It is not, therefore, necessary for the ITO to strike out any portion of the notice issued to him.

9. The principle of natural justice contained in s. 274 which requires that an assessee shall be heard before levying penalty under s. 271 is to ensure that the basic requirement of fair play in action is fulfilled. The rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity, it has to be established that prejudice has been caused to the party concerned by the procedure followed. We have already mentioned above that the assessee has not shown that any such prejudice has been caused to him. Attention may be invited in this connection to the decision of the Supreme Court in Tripathi v. State Bank of India, . We have perused the judgment of the Kerala High Court in Subramania Iyer v. Union of India [1974] 97 ITR 228, on which the assessee has relied. With great respect, we are unable to agree that the mere non-striking off of the inappropriate portions in a notice renders the notice automatically invalid unless in a further enquiry in the matter it is shown that by reason of the notice not properly conveying the gist of the offence to the assessee, prejudice is caused to him. We cannot accept as a general proposition of law that in every

26. We find following the above decision, the Hon'ble AP High court in the case of Srinivasa Pitty & sons vs CIT (supra) at para 3 of the order has observed as under:-

3. The Revenue filed an appeal before the Tribunal. The Tribunal accepted the Revenue's contention that there was no defect in the show-cause notice. Consequently, it directed the Appellate

Assistant Commissioner to consider the question regarding merits. Aggrieved by the aforesaid order, the matter has been carried to this court by the assessee. Looking at the notice under section 274 dated March 12, 1974, we are inclined to accept the assessee's contention that the notice was defective, because the relevant portion in the notice concerning the levy of penalty for concealment of income and giving inadequate particulars of income was struck off. Fortunately, for the Revenue, however, the assessee understood the notice as one for the levy of penalty under section 271(1) (C) of the Income-tax Act. Accordingly, he sent a reply. The assessee's reply was considered and penalty was levied. We, therefore, think that no prejudice is caused to the assessee by the defective nature of the notice as he has had full opportunity before the Income-tax Officer to set out his defence against the levy of penalty under section 271(1) (C) of the Act. In that view, we consider that the order of the Income-tax Officer levying penalty under section 271(1) (C) of the Act does not suffer from want of jurisdiction. Support for this view can be found in a decision of this court in CIT v. Chandulal .

27. Though the learned Counsel for the assessee cited a few decisions of the Hon'ble AP High Court, cancelling the penalty for not specifying in the notice as to whether such penalty is for concealment of particulars of income or furnishing of inaccurate particulars thereof, we find the Hon'ble High court in the later decisions have not considered the earlier decisions of the High Court since these were not brought to the notice of their lordships and therefore, cannot be followed especially when the earlier decisions are not reversed by the Apex Court and therefore, still holds good.

28. In this view of the matter, we are of the considered opinion that merely for non-specifying in the notice as to under which limb the penalty is levied i.e., for concealment of income or furnishing inaccurate particular of income thereof, the penalty cannot be cancelled especially when the assessee who is a non-filer was put to notice which he has understood and has replied to such notice issued by the AO. In the light of the above discussion, we uphold the order of the ld.CIT(A) in sustaining the penalty levied by the AO. The grounds raised by the assessee are accordingly dismissed.

29. In the result, the appeal filed by the assessee is dismissed.

ITA NO.234/HYD/2022 for AY 2012-13:

30. The assessee raised the following grounds of appeal:

> *1. The Hon'ble commissioner of Income Tax (Appeals) has erred both on facts of the case and in law involved in so far as it is prejudicial to the interest of the Appellant.*
>
> *2.The Hon'ble CIT(A) without taking into consideration the information filed before him proceeded to complete the appeal u/s.250 of the 1T Act and the same is not sustainable.*
>
> *3. The Hon'ble CIT(A) ought to have appreciated that the appellant had filed the return of income and had disclosed the property transaction resulting in capital gain in the return of income filed u/s 148 of the IT Act.*
>
> *4. The Hon'ble CIT(A) should have considered that this is a case which falls under explanation 1 to section 271 (1) (c) as the appellant had furnished all the particulars necessary for the computation of income was under a bonafide belief.*
>
> *5. The Hon'ble CIT(A) ignored the explanations given by the appellant and proceeded to confirm the order of assessing officer arbitrarily and such action of the Hon'ble CIT(A) has no basis and therefore the same is liable to be deleted.*
>
> *6. To modify the Grounds raised or to raise any other Ground(s) not raised with the permission of the Honorable Members of the Income Tax Appellate Tribunal.*

31. After hearing both the sides, we find the grounds raised by the assessee in the instant appeal are identical to the grounds raised by the assessee in ITA No.235/Hyd/2022 for AY 2012-13. We have already decided the issue and the grounds raised by the assessee have been dismissed. Following similar reasonings, the grounds raised by the assessee in the instant appeal are dismissed.

32. In the result, the appeals filed by the respective assessees are dismissed.

Order pronounced in the Open Court on 22nd February, 2023.

Sd/- **Sd/-**

(LALIET KUMAR)	**(RAMA KANTA PANDA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, dated 22nd February, 2023.
PVV & Thirumalesh/sps

Copy to:

S.No	Addresses
1	Moola Padmaja, 8-1-293/A/74/Assessee Dwaraka Nagar Colony, Narayanamma Engineering College, Raidurg, Hyderabad-500 008
2	Vinod Aerakula, B-109, Western Plaza, Hussain , shahwali Darha Shaikpet, HyderabadTelangana
3	ACIT,CC-3(2), 7th Floor, Aaykar Bhawan, Basheer Bagh Hyderabad-500 004
4	CIT(A)-11, Hyderabad
5	Pr.CIT(Central), Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order