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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER 2015

PRESENT

THE HON'BLE MR.JUSTICE VINEET SARAN

AND

THE HON'BLE MRS. JUSTICE S. SUJATHA

I.T.A. No. 380 of 2015

BETWEEN:

1. COMMISSIONER OF INCOME TAX,
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE-560 001
2. THE INCOME TAX OFFICER,
WARD-6 (3),
BANGALORE

... APPELLANTS

(BY SRI. E I SANMATHI, ADV.)

AND

M/S SSA'S EMERALD MEADOWS,
GOPALAPURA VILLAGE,
BAGALUR POST JALA HOBLI,
BANGALORE NORTH TALUK 562 157,
PAN:AAACQ369B

... RESPONDENT

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX
ACT 1961 PRAYING TO DECIDE THE FOREGOING QUESTION OF
LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE
FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND

SET ASIDE THE APPELLATE ORDER DATED 31/03/2015 PASSED BY THE ITAT, 'A' BENCH, BANGALORE, IN APPEAL PROCEEDINGS IN ITA NO. 433/BANG/2014 FOR ASSESSMENT YEAR 2009-10, AS SOUGHT FOR IN THIS APPEAL AND GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THIS ITA COMING ON FOR ADMISSION THIS DAY, VINEET SARAN J. DELIVERED THE FOLLOWING:

JUDGMENT

Heard Sri E.I.Sanmathi, learned counsel for the appellants and perused the record.

2. This appeal has been filed raising the following substantial questions of law:

(1) Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

- (2) *Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid despite the amendment of Section 271(1B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?*
- (3) *Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?*

3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad

in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of **COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.**

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly **dismissed.**

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Rd/-