

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' B '

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T. A. Nos.313 to 315/Bang/2014
(Assessment Years : 2007-08 to 2009-10)

Shri E. Krishnappa,
No.1064, 8th Cross, 7th Block,
HMT Layout, Bangalore-560 097
PAN AHLPK 6031H

.... Appellant.

Vs.

Income Tax Officer,
Ward 6(1), Bangalore.

..... Respondent.

Appellant By : Shri Narendra Sharma, Advocate.
Respondent By : Dr.P.K. Srihari, Addl. CIT (D.R.)

Date of Hearing : 10.08.2015.
Date of Pronouncement : 14.08.2015.

O R D E R

Per Bench :

These appeals by the assessee are directed against the orders of the Commissioner of Income Tax (Appeals)-III, Bangalore dt.6.11.2013 for Assessment Years 2007-08 to 2009-10.

2. The facts of the case, briefly, are as under :-

2.1 The assessee filed his return of income for Assessment Year 2007-08 on 30.7.2007 declaring income of Rs.2,22,430. For Assessment Years 2008-09 and 2009-10, the assessee filed his returns of income on 8.1.2010 declaring income of Rs.81,96,000 and Rs.27,45,805 respectively. The assessee along with one Sri M.N. Reddy developed a layout of sites known as

'Singapore Layout' at Vidyaranyapura, Bangalore and sold the sites jointly. A survey under Section 133A of the Income Tax Act, 1961 (in short 'the Act') was conducted at the assessee's premises on 11.11.2009.

2.2 Consequent to the survey under Section 133A of the Act, the assessee declared his share of income from the joint venture at 'Singapore Layout'. For Assessment Year 2007-08, the assessee filed a revised return of income on 8.1.2010 declaring income of Rs.84,73,277 wherein the assessee's profit from 'Singapore Layout' was Rs.84,56,800. For Assessment Year 2008-09 the assessee filed a revised return of income on 8.1.2010 declaring income of Rs.81,96,000 as profit earned from the 'Singapore Layout'. For Assessment Year 2009-10, the assessee filed a revised return of income declaring income of Rs.27,96,500 which was admitted as profit earned by him from 'Singapore Layout'. Proceedings under Section 147 of the Act were initiated by the Department for Assessment Years 2007-08 and 2008-09 to bring to tax income of the assessee, earned from 'Singapore Layout' venture, that had escaped assessment. Consequently, notices under Section 148 of the Act dt.16.4.2010 were issued to the assessee for Assessment Years 2007-08 and 2008-09 and in response thereto, the assessee vide letter dt.6.5.2010 stated that the returns filed on 8.1.2010 for Assessment Year 2007-08 and on 7.1.2010 for Assessment Year 2008-09 be treated as filed in response to the notices issued under Section 148 of the Act. For Assessment Year 2009-10, scrutiny proceedings were initiated by issue of notice under Section 143(2) of the Act. The assessments for Assessment Years 2007-08 to 2009-10 were concluded as under :-

Asst. Year	Returned Income Revised/Returned (Rs.)	Assessed Income (Rs.)	Order Under Section	Date of order.
2007-08	84,73,277	86,23,280	143(3) rws 147	29.12.2011
2008-09	80,45,998	81,96,000	143(3) rws 147	29.12.2011
2009-10	27,45,905	28,95,900	143(3)	29.12.2011

2.3 Consequent to the passing of orders of assessment for Assessment Years 2007-08 to 2009-10 dt.29.11.2011, the Assessing Officer took up penalty proceedings under Section 271(1)(c) of the Act for these three assessment years which were initiated by issue of separate notices under Section 274 rws 271 of the Act dt.29.12.2011 along with the orders of assessment for the aforesaid three assessment years. The Assessing Officer was of the view that but for the survey action under Section 133A of the Act, the assessee would not have declared the income earned by him from the joint venture carried out with Sri M.N. Reddy, in forming a 'Singapore Layout'. The Assessing Officer accordingly held that the assessee had concealed particulars of his income and furnished inaccurate particulars of income and proceeded to levy penalty under Section 271(1)(c) of the Act on the assessee of Rs.28,12,034 for Assessment Year 2007-08, Rs.27,28,035 for Assessment Year 2008-09 and Rs.9,10,671 for Assessment Year 2009-10 @ 100% of the tax sought to be evaded vide orders dt.30.3.2012.

2.4 On appeal by the assessee, the learned CIT (Appeals) - III, Bangalore vide separate orders dt.6.11.2013 dismissed the assessee's appeals and confirmed the levy of penalty under Section 271(1)(c) of the Act for all the three assessment years 2007-08 to 2009-10.

3.1 Aggrieved by the orders of the CIT (Appeals) - III, Bangalore dt.6.11.2013 confirming the levy of penalty under Section 271(1)(c) of the Act for Assessment Years 2007-08 to 2009-

10, the assessee is in appeal before the Tribunal raising identical grounds, we therefore extract hereunder the grounds raised for Assessment Year 2007-08 :-

- "1. The order of the learned CIT (Appeals), passed under Section 250 of the Act in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the appellant's case.*
- 2. The penalty proceedings are bad in law and not sustainable in law under the facts and circumstances of the case.*
- 3. The appellant denies itself liable to be levied a penalty of Rs.28,12,034 under the facts and circumstances of the case.*
- 4. The learned CIT (Appeals) failed to appreciate that no penalty can be levied under the facts and circumstances of the case in as much as -*
 - (i) No addition has been made to the income returned, pursuant to the survey operations and the case is squarely covered by Explanation (1) to Section 271(1)(c).*
 - (ii) Appellant has declared income voluntarily only to buy peace and to avoid protracted litigation.*
- 5. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*
- 6. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity."*

3.2 In the course of hearing of these appeals, the learned Authorised Representative filed the following identical additional grounds of appeal for all the three for Assessment Years 2007-08 to 2009-10 along with a prayer for admission of the same :-

- "1. The order confirming the penalty passed by the learned Commissioner of Income Tax (Appeals) - III Bangalore, under section 271[1][c] of the Act, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*
- 2. The Appellant denies himself liable to the penalty of Rs. 28,12,034/- confirmed by the learned Commissioner of Income Tax (Appeals) - III, Bangalore under section 271[1][c] of the Act under the facts and circumstances of case.*
- 3. The learned Commissioner of Income Tax (Appeals) ought to have allowed the appeal of the appellant since the AO has passed the order without assumption of proper jurisdiction, as the mandatory conditions for invoking the provisions of section 271[1][c] of the Act has not been complied with under the facts and circumstances of the case.*

4. *The Commissioner of Income Tax (Appeals) was not justified in confirming the penalty as the levy of penalty under section 271[1][c] of the Act is not automatic and the learned CIT (A) ought to have deleted the penalty under the facts and circumstances of the case.*
5. *The order of penalty is bad in law for the reason that the Notice for initiation of penalty as to whether it is concealment of income or furnishing of inaccurate particulars of income is not discernable from the notice issued and consequently the order of penalty passed under section 271[1][c] of the Act on an invalid notice does not have any legs to stand and the penalty levied under section 271[1][c] of the Act deserves to be deleted, under the facts and circumstances of the case.*
6. *The Learned CIT(A) was not justified in ignoring the action of the assessing officer, who in the order of assessment has not recorded reasons for concealment nor filing of inaccurate particulars. The notice issued is ambiguous on the charge and hence bad in law.*
7. *The learned CIT (A) failed to appreciate that the penalty proceedings are independent with that of the assessment proceedings and ought to have considered the submissions made by the appellant as regard to the merits of the matter under the facts and circumstances of the case.*
8. *The learned CIT (A) failed to appreciate that the appellant has neither concealed any income nor furnished inaccurate particulars of income to warrant levy of penalty and therefore the penalty levied under section 271[1][c] of the Act requires to be cancelled.*
9. *Without prejudice the learned CIT(A) failed to appreciate the fact that mere additions and disallowances made in the assessment proceedings does not automatically warrant the levy of penalty under section 271[1][c] of the Act, under the facts and circumstances of the case.*
10. *Without prejudice to the above, the penalty levied is highly excessive and liable to be reduced substantially.*
11. *The appellant craves leave to add, alter, modify, delete or substitute any or all of the grounds at the time of hearing the appeal.*
12. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed and appropriate relief may be granted in the interest of justice and equity."*

4.1.1 The additional grounds raised by the assessee, more specifically at S.Nos.3 and 5 thereof; is a preliminary issue challenging the validity of the orders imposing penalty under Section 271(1)(c) of the Act for all the three assessment years 2007-08 to 2009-10, in view of defective notices issued by the Assessing Officer under Section 274 rws 271 of the Act dt.29.12.2011 for the aforesaid assessment years. In this regard, the learned Authorised Representative for the assessee filed before us copies of the notices issued under Section 274 rws 271 of the Act dt.29.12.2011 issued by the Assessing Officer for initiating penalty proceedings for Assessment Years 2007-08 to 2009-10. It was brought to our notice that in the show cause notices issued to the assessee under Section 274 rws 271 of the Act, the Assessing Officer has not spelt out as to whether the assessee has concealed the particulars of his income or furnished inaccurate particulars of his income. The learned Authorised Representative drew the attention of the Bench to the said notices and to the fact that the Assessing Officer has placed a tick mark in the paragraph "... concealed particulars of your income or furnished inaccurate particulars of such income" without deleting the inappropriate words and paragraphs, as he/she is required to do as per the instructions at the bottom of the notices. In other words, the learned Authorised Representative submits, the show cause notices issued under Section 274 rws 271 do not spell out the charge against the assessee; i.e. as to whether the assessee is guilty of having concealed particulars of income or of having furnished inaccurate particulars of income.

4.1.2 The learned Authorised Representative further submitted that it is not discernable from the assessment orders that satisfaction has been arrived at by the Assessing Officer for

initiation of penalty proceedings. It was further submitted that the returns of income filed by the assessee disclosing the income earned from sale of sites at 'Singapore Layout' has been accepted without making further additions/disallowances to the business income so declared and consequently penalty under Section 271(1)(c) of the Act cannot be levied on such income.

4.2 The learned Departmental Representative objected to the admission of the additional grounds of appeal raised by the assessee and also vehemently supported the orders of the Assessing Officer and the learned CIT (Appeals) in imposing penalty and confirming the levy of the same. It was contended by the learned Departmental Representative that since the assessee had raised the additional grounds before the Tribunal for the first time and not before the authorities below, the said additional grounds be remanded to the file of the learned CIT (Appeals) for consideration. In support of this contention, the learned Departmental Representative placed reliance on the decision of the Hon'ble Madhya Pradesh High Court in the case of CIT V Tolaram Hassomal reported in 298 ITR 22.

4.3 In his rejoinder, the learned Authorised Representative for the assessee submitted that the additional grounds raised by the assessee is purely question of law and no facts are required to be investigated other than the information and details available in the records of the Department. It was further contended that the additional grounds raised with regard to the validity of the notices issued under Section 274 rws 271 of the Act is a jurisdictional issue and the issue of notices which are proper and legally correct in all respects is since qua non for invoking penal provisions and any proceedings concluded on an illegal notice is void-ab-initio and would have no legs to stand on. In respect of the submissions of the learned Departmental

Representative for the additional grounds to be set aside for consideration by the learned CIT (Appeals), the learned Authorised Representative vehemently opposed the same. It was contended that the issue regarding the validity of the defective notices issued under Section 274 rws 271 of the Act is a jurisdictional matter, which is not a curable defect as per the statute and also the decision of the Hon'ble High Court of Karnataka in the case of CIT V Manjunatha Cotton & Ginning Factory reported in 359 ITR 565 and therefore all the facts and the legal matrix being available before the Tribunal for its decision, no purpose would be served by remanding the additional ground to the file of the CIT (Appeals).

4.4.1 We have heard the rival contentions and perused the material on record on the issue of the additional grounds raised by the assessee challenging the validity of the impugned penalty order levying penalty u/s.271(1)(c) of the Act for the Assessment Years 2007-08 to 2009-10 on the basis of defective notices issued by the Assessing Officer under Section 274 rws 271 of the Act dt.29.12.2011 for initiating penalty proceedings u/s.271(1)(c) of the Act. On a careful appreciation thereof, we find that these grounds are pure question of law and do not involve investigation of any facts otherwise than those on the records of the department. Taking into consideration the matter before us, we are of the considered view that, in the interest of equity and justice, these additional grounds raised by the assessee require to be admitted for consideration in this appeal as they go to the very root of the matter of the validity of the initiation of the proceedings that resulted in the levy of penalty u/s.271(1)(c) of the Act in the case on hand for Assessment Years 2007-08 to 2009-10.

4.4.2 In support of the assessee's contentions that the penalty levied u/s.271(1)(c) of the Act in the case on hand for Assessment Years 2007-08 to 2009-10 are to be cancelled as they are invalid, being based on initiation of the penalty proceedings by issue of defective notices under Section 274 rws 271 of the Act dt.29.12.2011, the learned Authorised Representative for the assessee has relied upon the decision of the Hon'ble High Court of Karnataka in the case of Manjunatha Cotton & Ginning Factory (supra) and of the co-ordinate bench of the Tribunal in the case of Raveerdhira L & Others V ITO in ITA Nos.1421 to 1426/Bang/2013 dt.12.12.2014. The co-ordinate bench in the case of Raveendhira L & Others (supra) following the decision of the Hon'ble High Court of Karnataka in the case of Manjunatha Cotton & Ginning Factory (supra) has held as under at paras 8 & 9 thereof as under :-

" 08. We have considered the rival submissions. The Hon'ble Karnataka High Court in the case of CIT & Anr. v. Manjunatha Cotton and Ginning Factory (supra) has laid down the following principles to be followed in the matter of imposing penalty u/s.271(1)(c) of the Act.

"NOTICE UNDER SECTION 274

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 the 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 Ashok Pai reported in 292 ITR 11 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 reported in 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.”

09. The final conclusion of the Hon'ble Court was as follows:

"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 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.*

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."

4.4.3 In the case on hand, we find from a careful perusal of the notices, issued under Section 274 rws 271 of the Act dt.29.12.2011 for Assessment Years 2007-08 and placed before the Bench in the course of hearing that the Assessing Officer has not specified under which limb of

the penalty u/s.271(1)(c) of the Act is to be levied; i.e. whether the penalty proceedings are being initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income. Such initiation of penalty proceedings has been held to be illegal by the Hon'ble High Court of Karnataka in the case of *Manjunatha Cotton & Ginning Factory (supra)*. Following the aforesaid decision of the Hon'ble High Court of Karnataka in the case of *Raveendhira L & Others (supra)*, we hold that the notices issued under Section 274 rws 271 of the Act dt.29.12.2011 for Assessment Years 2007-08 to 2009-10 are bad in law for the reasons mentioned in the aforesaid orders and consequently hold the penalty orders passed in consequence of these defective, invalid notices also to be invalid and cancel them.

4.5.1 On a careful appreciation of the rival contentions, the material on record and the judicial decision cited by the learned Authorised Representative, we are of the opinion that the issue raised by the assessee in the additional grounds with regard to the validity of the defective notices issued by the Assessing Officer under Section 274 rws 271 of the Act for Assessment Years 2007-08 to 2009-10 in the case on hand is a jurisdictional matter, a pure question of law in respect of a defect in the notice that is not curable in nature. In this view of the matter, we are of the opinion that the additional grounds in this regard are not required to be set aside to the file of the learned CIT (Appeals) as requested by the learned Departmental Representative. The fact that it is clear that the impugned notices under Section 274 rws 271 of the Act dt.29.12.2011 do not have the appropriate portions marked to specify as to whether the penalty is proposed to be levied for concealment of income or for furnishing of inaccurate particulars of income; which fact has not been disputed by Revenue and the defects being not curable, we are

of the opinion that in view of the factual and legal reasoning rendered above, there is no requirement for us to set aside the additional ground to the file of the learned CIT (Appeals) for consideration.

4.5.2 As regards the decision cited by the learned Departmental Representative CIT V Tolaram Hassomal (298 ITR 22) (MP), the co-ordinate bench of this Tribunal in the case of Smt. K.R. Prabhavati in M.P. No.5/Bang/2014 (in ITA No.234/Bang/2011) had occasion to examine the said decision. The co-ordinate bench in its order dt.10.4.2015 observed that it is not the decision of the jurisdictional High Court by the Hon'ble High Court of Karnataka and is also contrary to the law laid down by the Hon'ble Apex Court in the case of NTPC Ltd. in 229 ITR 383 (SC). The relevant portion of the order of the co-ordinate bench at para 10 thereof reads as under :-

" ... As far as the decision of the Hon'ble Madhya Pradesh High Court in Tolaram Hassomal (supra) is concerned, it is not the decision of the jurisdictional High Court and is contrary to the law laid down by the jurisdictional High Court viz. Hon'ble High Court of Karnataka in the case of Sankeshwar Printers Pvt. Ltd. (supra) and is also contrary to the decision of the law laid down by the Hon'ble Supreme Court in the case of NTPC Ltd. (supra)....."

4.5.3 In fact, the Hon'ble Madhya Pradesh High Court itself has not followed the decision of Tolaram Hassomal (supra) in its subsequent decisions. The Hon'ble Madhya Pradesh High Court has analysed the powers of the Tribunals on admissibility of additional grounds in the case of Torquouse Investment & Finance Ltd., in 299 ITR 143 dt.28.3.2006 wherein the Hon'ble Court relying on the decision of the Hon'ble Apex Court in the case of PVAL Kulandagan Chettiar (267 ITR 654) held that the Tribunal could not be precluded from considering the question of law arising in an assessment proceeding and not raised earlier. It was held that the Tribunal was

justified in law in recording a finding on an issue which was not raised by the assessee either before the Assessing Officer or the learned CIT (Appeals) but was raised for the first time before the Tribunal. The said order has been affirmed by the Hon'ble Apex Court in 168 Taxmann 107.

4.5.4 The Indore Bench of the Tribunal in the case of Basantilal Jain in IT(SS)A No.64/Ind/2007 has examined both the aforesaid decisions of the Hon'ble Madhya Pradesh High Court and at para 4 of its order held that :-

“ 4.....Hon'ble High Court of Madhya Pradesh in 11 the case of Either Motors reported in 293 ITR 464 have held that additional grounds can be raised before the ITAT even if not raised before the Assessing Officer or the learned Commissioner of Income tax (Appeals). Accordingly, the Tribunal was justified in permitting the assessee to raise additional grounds of appeal even through the issue was not raised before the Assessing Officer or the learned Commissioner of Income tax (Appeals). Similarly, Hon'ble Madhya Pradesh High Court in the case of Steel Ingots; 135 CTR 379 held that additional ground requiring no appreciation of facts, Tribunal should have permitted the assessee to raise the question. It was observed that eventual destination of every litigation is justice and as such technicality should not be 12 permitted to prevail as a speed breaker in the case of dispensation of justice. Similar view has been taken by the Hon'ble High Court of Madhya Pradesh in the case of Bhopal Sugar Mills Limited; 233 ITR 429 wherein it was held that there is no prohibition on the power of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for just decision of the case. In view of the above discussion and decision of the Hon'ble Supreme Court in the case of National Thermal Power (supra) and the latest decision of the Hon'ble jurisdictional High Court in the case of Turquoise Investment & Finance Limited (supra), which was after the date of decision cited by the learned CIT DR in the case of Tolaram Hassomal (supra), we 13 are inclined to follow the latest decision of the Hon'ble jurisdictional High Court decided after considering the decision of Hon'ble Supreme Court reported at 267 ITR 654. As all the facts relating the additional legal grounds taken before us are already on record, we are inclined to entertain the additional grounds which are purely legal in nature and accordingly proceed to decide the same.”

From the above discussion, it is clear that when a legal question is raised, the Tribunal cannot be precluded from admitting the same and considering it in accordance with law.

5. Since we have cancelled the penalties levied u/s.271(1)(c) of the Act for Assessment Years 2007-08 to 2009-10 in the case on hand on the basis of our adjudication of the preliminary issue

of the validity of the defective notices issued under Section 274 rws 271 of the Act dt.29.12.2011 as raised in additional Grounds No.3 & 5 of the additional grounds, the arguments raised in the other grounds become academic. We are therefore of the view that no separate adjudication is called for in respect of the other issues raised by the assessee in the original grounds of appeal at S.Nos.1 to 6 and additional grounds 1, 2, 4 & 6 to 12 at this juncture.

6. In the result, the assessee's appeal for Assessment Years 2007-08 to 2009-10 are allowed.

Order pronounced in the open court on 14TH August, 2015.

Sd/-
(GEORGE GEORGE K)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore