IN THE INCOME TAX APPELLATE TRIBUNAL
"B"BENCH: BANGALORE

BEFORE SHRI BALAKRISHNAN S., ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 512/Bang/2026
Assessment Year: 2012-13

T V Aleyas Engineers Private Limited 8, Nehru Main Road St. Thomas Town SO Bengaluru 560 084 **PAN No. AACCT3104H**	**Vs.**	DCIT Central Circle-2 Mangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri Sudheendra B.R., Advocate, A.R.
Respondent by	:	Sri Pradeep S., Addl. CIT-DR

Date of Hearing	:	09.07.2026
Date of Pronouncement	:	06.10.2026

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the ld.CIT(A)-2, Panaji dated 29.12.2025 vide DIN: ITBA/APL/M/250/2025-26/1084154263(1) passed u/s 250 of the Income Tax Act, 1961 (in short "the Act") for the assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:-

1. **General ground:**

1.1. The Hon'ble Commissioner of Income Tax (Appeal)-2 Panaji, Goa (hereinafter 'CIT(A)') has erred in passing the order under section 250 dated 29.12.2025 upholding the penalty of Rs. 66,89,000 levied under section 271(1)(c) for AY 2012-13. The impugned order so passed is bad in law and liable to be quashed.

2. **Ground relating to the nature of Penalty under 271(1)(c)**

2.1. The learned Deputy Commissioner of Income tax, Central Circle 2, Mangalore (hereinafter 'AO') has erred in passing the order under section 271(1)(c) dated 28.03.2018 in the manner passed by him. The order so passed being bad in law is liable to be quashed.

2.2. The learned AO, has erred in levying penalty under section 271(1)(c) without specifying whether the penalty was proposed to be levied for concealment of income or for furnishing of inaccurate particulars of income in the notice under section 271 read with section 274 dated 30.03.2015.

2.3. The learned AO contrary to the notice for penalty as mentioned above has erred in passing the order under section 271(1)(c) invoking both limbs, i.e., concealment of income and for furnishing of inaccurate particulars of income whereas the notice merely used the

expression "Concealed the particulars of your income or furnished inaccurate particulars of such income".

2.4. The order so passed under section 271(1)(c) is bad in law in view of the decision of the Jurisdictional High Court in the case of CIT v Manjunatha Cotton Ginning Factory 35 taxmann.com 250 and CIT v SSAs Emerald Meadows 73 taxmann.com 241 (Kar).

2.5. The Hon'ble CIT(A) has erred in sustaining the penalty order holding that the aforesaid grounds raised before the Hon'ble CIT(A) were 'generic and academic in nature and do not call for separate adjudication' without considering the facts of the case and submissions made by the Appellant.

2.6. Without prejudice, the Hon'ble CIT(A) has erred in disregarding the Appellant's contention concerning the absence of satisfaction by the AO in the course of assessment proceedings relating to concealment of income. Further, a mere remark of 'penalty proceedings u/s 271(1)(c) initiated separately' without any specific finding or clear direction as required by section 271(1B) is prima facie satisfaction for initiation of penalty proceedings.

2.7. Basis of the aforesaid facts and circumstances, the order so passed by the learned AO and upheld by the Hon'ble CIT(A) is bad in law and liable to be quashed

3. **Ground relating to the levy of penalty under section 271(1)(c)**

3.1. The Hon'ble CIT(A) has erred in confirming the penalty under section 271(1)(c) despite the fact that the conditions for levying penalty under section 271(1)(c) read with Explanation 1 are not being satisfied.

3.2. The Hon'ble CIT(A) has failed to appreciate the fact that although the appellant did not file the original return of income under section 139(1), the appellant subsequently filed the return of income furnishing complete and true particulars of income, including income from house property and interest income. The mere fact that the return was filed pursuant to statutory notice cannot, by itself, lead to the presumption that the appellant

intended to conceal income, especially in the absence of any independent incriminating material or finding establishing deliberate non-disclosure.

3.3. The learned AO and Hon'ble CIT(A) have erred by not understanding the facts of the case and have levied penalty under section 271(1)(c) solely on the fact that incremental expenses cannot be claimed when there is no revenue receipt during the year even after acknowledging the fact that there was temporary recession in the real estate business.

3.4. The learned AO and Hon'ble CIT(A) erred in not appreciating that the appellant has not appealed against the order of CIT(A) dated 15.02.2017 wherein the CIT(A) has confirmed the addition to the tune of Rs. 15,62,305 being administrative expenses and Rs 8,15,372 being depreciation only to buy peace and avoid litigation.

3.5. The Hon'ble CIT(A) has erred in fact and law by not considering the aforesaid acceptance by the Appellant of the addition made by citing the decision of the Apex court in Mak Data Pvt. Ltd. Vs CIT [358 ITR 593]. The case is distinguishable in Appellant's case as relevant explanation and evidence have been provided to demonstrate genuineness.

3.6. On facts and circumstances of the case and law applicable, the impugned penalty of Rs. 66,89,000 imposed under section 271(1)(c) is bad in law and is liable to be deleted.

4. Prayer

4.1. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the Hon'ble CIT(A) upholding the order of the learned AO be quashed and the penalty levied under section 271(1)(c) be deleted.

3. The brief facts of the case are that the assessee is a private limited company engaged in the activity of running club with swimming pool, billiards, etc. and real estate business including construction activities. It was noted that, the assessee company as well as the developer M/s. Plama Developers Ltd. had not filed proper return of income disclosing the true and correct income and the source for investment in the project. Hence, a survey u/s 133A of the Act was conducted in the office premises of the assessee and

search u/s 132 of the Act was conducted in the case of M/s. Plama Developers Ltd. on 09.01.2013 and several documents relating to various unaccounted investments and transactions were found and seized. From the documents seized during the search at the premises of M/s. Plama Developers Ltd., several documents relating to transactions with the assessee was also found and seized. It was shown that the assessee was habitual defaulter in filing income tax returns and no IT returns for the relevant AY relating to JV was seen filed. Hence, after recording reasons, the notice u/s 153C of the Act was issued to the assessee on 24.03.2014. In response to notice, the assessee company filed its return of income on 17.03.2015 by declaring a total income of Rs.42,00,610/- after setting off against current business loss of Rs.59,59,595/- and brought forward loss of Rs.10,82,062/-. No self-assessment tax was paid. Subsequently, the assessment was completed u/s 153C r.w.s. 143(3) of the Act on 30.03.2015 disallowing the business loss of Rs.59,59,595/- and brought forward loss and bringing to tax an amount of Rs.1,12,42,267/- being income from house property of Rs.60,59,260/- and income from other sources of Rs.1,12,42,267/-. The AO on or before the completion of the assessment proceedings had also initiated the penalty proceedings u/s 271(1)(c) of the Act separately.

3.1 While passing the penalty order, the AO in paragraph 4 of the order had categorically observed that the assessee had not declared the correct particulars of income for the subject assessment year and if it was not for the search, the same would have remained undisclosed for the subject assessment year. Considering, this aspect **which amounts to concealment of income/furnishing inaccurate particulars of income**, penalty proceedings u/s 271(1)(c) of the Act was initiated separately vide notice dated 30.03.2015. The AO after considering the reply/objection/details of

the assessee as well as based on the material available on record, the AO concluded the penalty proceedings u/s. 271(1)(c) of the Act as under:-

- The claims made during the proceedings u/s. 271 about the non existence of concealment of Income and mere additions to income not amounting to concealment is totally unacceptable as the submission / reasons of the assessee are neither on strong footing nor true to facts.
- The assessee has been a habitual defaulter in filing the return of income. It was only after the notice u/s. 153C was issued to the assessee that a return of income for AY 2009-10 was filed as late as on 08.09.2014. As reflected in the assessment order, the amount of Rs. 23,77,677/- being wrong claim of business loss amounting to Rs. 15,62,305/- and wrong claim of depreciation amounting to Rs. 8,15,372/- as confirmed by CIT(A) is **treated as inaccurate particulars of income** furnished by the assessee.
- The assessee admitted the income from house property of Rs. 60,59,260/- and interest income of Rs. 1,12,42,267/- only after the initiation of proceedings u/s. 153C of the Act as the assessee failed to declare the same. Hence, the amount of Rs. 1,73,01,527/- (Rs.60,59,260/- + Rs.1,12,42,267/-) was **treated as concealment of income** which in the natural course has been evaded by the assessee.
- The assessee failed to file the original return of income and also **did not furnish correct particulars of the Income** filed in response to notice u/s. 153C of the Act.
- Even during the assessment proceedings, the assessee was resorting to delaying tactics and failed to produce proper books of account, audit reports, confirmation of loans given / received, confirmation of advances / deposits given / received

etc. inspite of several reminders and thus, there was not a true and correct disclosure of the income of the assessee.

3.2 Considering the above, the AO held that the assessee company had furnished inaccurate particulars of Income to the extent of Rs. 23,77,677/- being the wrong claim of business loss and concealed income of Rs. 1,73,01,527/-. The assessee has failed to prove that the claim is bonafide and accordingly, the AO held that the penalty is leviable on account of concealed income and furnishing inaccurate particulars of income total amounting to Rs. 1,96,79,204/- (Rs. 23,77,677/- + Rs. 1,73,01,527/-). Further as per the provisions of section 271(1)(c) of the Act, the minimum penalty leviable works out to Rs. 66,88,961/- and the maximum penalty would be Rs. 2,00,66,883/- and considering the facts and circumstances of the case, the AO levied a penalty of Rs. 66,89,000 only.

4. Aggrieved by the penalty order passed by the AO u/s. 271 (1)(c) of the Act dated 23.08.2018, the assessee preferred an appeal before the ld. CIT(A), Panaji.

5. The ld. CIT(A)-2, Panaji dismissed the appeal of the assessee by observing that the AO rightly held that the assessee had concealed income and furnished inaccurate particulars of income by not disclosing income from house property and interest income in the original return and by making wrong claims of business loss, administrative expenditure and depreciation. Further, the ld. CIT(A) observed that the argument of the Assessee that the additions were made merely on account of difference of opinion is also not acceptable. In the present case, the disclosure of income and the wrong claims were not matters of interpretation or debatable issue but were detected as a result of survey proceedings. The assessee

neither disclosed the full particulars of income in the original return nor furnished correct details during the assessment proceedings. The ld. CIT(A) noted that the assessee admitted the income only after the issue of notice u/s. 153C of the Act and such post detection disclosure does not absolve the assessee from the rigors of section 271(1)(C) of the Act. The explanation offered by the assessee has not been substantiated with credible evidence and therefore, fails the test prescribed under explanation 1 to section 271(1)(C) of the Act. In view of the above, the ld. CIT(A), Panaji was satisfied that this is a fit case for levy of penalty u/s. 271(1)(C) of the Act and the AO has correctly levied the penalty after considering the relief granted in quantum proceedings and restricting the penalty only to the income finally confirmed.

6. Again, aggrieved by the order of the ld. CIT(A)-2, Panaji dated 29.12.2025, the assessee has filed the present appeal before this Tribunal.

7. Before us, the ld. AR of the assessee vehemently argued that a precondition for the valid conduct of penalty proceeding is that the explicit ground / limb of Sec. 271(1)(C) of the Act i.e. whether for concealment of particulars of income or for furnishing inaccurate particulars of income, on the basis of which, penalty was proposed to be levied is to be specified by the AO as being against the principles of natural justice. Further, the ld. AR of the assessee submitted that in the present case, the assessment order dated 30.03.2015, the show cause notice u/s. 274 r.w.s. 271(1)(c) of the Act dated 30.03.2015 as well as the penalty order u/s. 271(1)(c) of the Act are issued on both the limbs mentioned in section 271(1)(c) of the Act generally. Lastly the ld. AR submitted that it is necessary that the satisfaction regarding which particularly limb of section 271(1)(c) of the Act i.e. concealment or furnishing inaccurate

particulars of income is applicable should be specified at each stage of the penalty proceedings. The ld. AR of the assessee highly relied on the judgments of the Hon'ble jurisdictional High Court of Karnataka in the case of CIT & Anr. v. Manjunatha Cotton & Ginning Factory reported in (Karn-HC) (2013) 359 ITR 565 and in the case of CIT, Bangalore v. SSA'S Emerald Meadows reported in [2016] 73 taxmann.com 241 (Karnataka).

8. Per Contra, the ld. DR heavily relied on the orders of the Authorities below & vehemently submitted that the AO while issuing the SCN as well as while passing the penalty order had given categorical findings that the assessee company had not only concealed the particulars of income but also furnished inaccurate particulars of income & therefore the arguments of the ld. AR of the assessee will not sustain. Further, the ld. DR submitted that as reflected in the assessment order, the amount of Rs. 23,77,677/- being wrong claim of business loss amounting to Rs. 15,62,305/- and wrong claim of depreciation amounting to Rs. 8,15,372/- as confirmed by CIT(A) is **treated as inaccurate particulars of income** furnished by the assessee. Further, the assessee admitted the income from house property of Rs. 60,59,260/- and interest income of Rs. 1,12,42,267/- only after the initiation of proceedings u/s. 153C of the Act as the assessee failed to declare the same and hence the amount of Rs. 1,73,01,527/- (Rs.60,59,260/- + Rs.1,12,42,267/-) is **treated as concealment of income** which in the natural course had been evaded by the assessee and accordingly prayed to dismiss the appeal of the assessee.

9. We have heard the rival submissions & perused the materials available on record. In our considered opinion, there are normally three stages proceedings for the levy of penalty:-

(i) Initiation of penalty proceedings in the assessment order;

(ii) Providing the assessee an opportunity of being heard as per section 274 of the Act;

(iii) Recording of reasons as to why it is a fit case for the levy of penalty and passing of the order levying penalty.

On perusal of the assessment order, we observed that during the course of the assessment proceedings, the AO had given categorical findings that the assessee was resorting to delaying tactics and failed to produce proper books of account, audit reports, confirmation of loans given / received, confirmation of advances / deposits given / received etc. The assessee provided only some Photostat copies of certain pages of audit report for certain years to claim its points of arguments which in the opinion of the AO were not a true and correct disclosure of the income of the assessee. We also observed that the AO on or before the completion of the assessment proceedings had initiated the penalty proceedings u/s. 271(1)(c) of the Act. Further, section 271(1B) of the Act was inserted to 271 by the Finance Act, 2008 w.r.e.f. 01.04.1989 to provide that an order of assessment / reassessment shall be deemed to constitute satisfaction of the assessing officer for initiation of the penalty proceedings u/s. 271(1)(c) of the Act. Even the Hon'ble Supreme Court in the case of MAK Data (P). Ltd. v. CIT (2013) 38 Taxmann.com 448/358 ITR 593 had held that in terms of section 271(1)(c) of the Act, the assessing officer had to satisfy whether penalty proceedings be initiated or not during the course of assessment proceedings and he is not required, to record his satisfaction in a particular manner or reduce it to writing.

9.1 Now coming to the contention of the ld. AR of the assessee that the AO erred in levying the penalty u/s. 271(1)(c) of the Act without specifying the penalty was proposed to be levied for concealment of income or for furnishing of inaccurate particulars of income in the notice u/s. 271 r.w.s. 274 of the Act dated 30.03.2015. Further, it is the submission of the ld. AR of the assessee that the AO passed the order u/s. 271(1)(c) of the Act by invoking both limbs i.e. concealment of income & for furnishing of inaccurate particulars of income, whereas the notice merely used the expression "concealed the particulars of income or furnished inaccurate particulars of such income". On perusal of the penalty order passed by the AO u/s. 271 (1)(c) of the Act, we observed that the AO categorically held that the assessee company had furnished inaccurate particulars of Income to the extent of Rs. 23,77,677/- being the wrong claim of business loss and concealed income of Rs. 1,73,01,527/-. The assessee has also failed to prove that the claim is bonafide and accordingly, the AO held that the penalty is leviable on account of concealed income and furnishing inaccurate particulars of income total amounting to Rs. 1,96,79,204/- (Rs. 23,77,677/- + Rs. 1,73,01,527/-).

9.2 We also observed that the assessee had been a habitual defaulter in filing its return of income as noted by the AO. It was only after the notice u/s. 153C was issued to the assessee that a return of income for AY 2009-10 was filed as late as on 08.09.2014. As reflected in the assessment order, the total amount of Rs. 23,77,677/- being wrong claim of business loss amounting to Rs. 15,62,305/- and wrong claim of depreciation amounting to Rs. 8,15,372/- as confirmed by CIT(A) was **treated as inaccurate particulars of income** furnished by the assessee. Further, the assessee admitted the income from house property of Rs. 60,59,260/- and interest income of Rs. 1,12,42,267/- only after the

initiation of proceedings u/s. 153C of the Act as the assessee failed to declare the same and hence, the amount of Rs. 1,73,01,527/- (Rs.60,59,260/- + Rs.1,12,42,267/-) was **treated as concealment of income** which in the natural course has been evaded by the assessee. Also, the assessee failed to file the original return of income and also **did not furnish correct particulars of the Income** filed in response to notice u/s. 153C of the Act. Thus, we are of the considered opinion that the AO had levied the penalty not only for concealment of particulars of its income but also furnishing inaccurate particulars of such income. Therefore, we find that the penalty notice as well as the penalty order were rightly issued by the AO on both the limbs as mentioned in section 271(1)(c) of the Act and for this reason, we find no breach in the action of the AO. Since the assessee not only concealed the particulars of its income but also furnished inaccurate particulars of such income as categorically observed by the AO, the AO has rightly specified both the limbs not only while issuing the showcause notice u/s. 274 r.w.s. 271 of the Act, but also while passing the penalty order 271(1)(c) of the Act and therefore, the AO has rightly passed the penalty order u/s. 271(1)(c) of the Act by invoking both the limbs. Had the assessee company come under the purview of one limb and the AO would not have specifically mentioned that limb while issuing the showcause notice and passing the penalty order, then it can be said that the AO has violated the principles of natural justice by not specifying the particular limb. In our considered opinion, the judgments of the Hon'ble Karnataka High Court as relied upon by the AR of the assessee is distinguishable on the facts and circumstances of the present case. Coming to the contention of the ld. AR of the assessee that there is violation of principles of natural justice on the ground of absence of opportunity, in our considered opinion, the assessee has to establish that prejudice is caused to the assessee company. We also take a note of the fact

that the AO had not only given the assessee an opportunity of being heard but the assessee had infact, given a written reply and was quite aware of the charges which it was required to meet and accordingly, in reply to the SCN dated 30.03.2015, the assessee had categorically stated that "on the facts and circumstances of the case and law applicable, there is no concealment of income or furnishing of inaccurate particulars of the Income and accordingly prayed to drop the penalty proceedings u/s. 271(1)(c) of the Act and oblige." In our considered opinion, u/s. 274 of the Act, all that was required was that the assessee should be given an opportunity to show cause. No statutory notice was prescribed in this behalf and therefore, we do not find any merits in the argument of the ld. AR of the assessee that the AO had erred in passing the order without specifying the particular limb.

9.3 Now coming to another contention of the ld. AR of the assessee that the AO erred in confirming the penalty despite the fact that the conditions for levying penalty u/s. 271(1)(c) read with explanation 1 are not being satisfied. In our considered opinion where in respect of any facts material to the computation of the total income of any person (a) such person fails to offer an explanation or offers an explanation which is found by the AO to be false or (b) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of its total income have been disclosed by them then, the amount added or disallowed in computing the total income of such person as a result thereof, shall be **deemed to represent** the income in respect of which particulars have been concealed.

Thus in our considered opinion, the assessee has to prove that the explanations are bonafide and that it has disclosed all material facts necessary for assessment. The assessee has to substantiate all

explanations. Therefore, by this explanation, the burden of proof has been specifically placed on the assessee company which it failed to do so. Therefore, we also do not agree with this contention of the ld. AR of the assessee. Further, the assessee had been a habitual defaulter in filing the return of income as observed by the AO. It was only after the notice u/s. 153C was issued to the assessee that a return of income for AY 2009-10 was filed as late as on 08.09.2014 that too without paying the self assessment tax. A defective memo was issued on 17.03.2015 giving opportunity to the assessee to rectify the defects in its return which was not cured and accordingly, the assessment was completed u/s. 144 of the Act. We agree with the view of the ld. CIT(A) that the assessee admitted the income only after the issue of notice u/s. 153C of the Act and such post detection disclosure does not absolve the assessee from the rigors of section 271(1)(C) of the Act. Further, the explanation offered by the assessee company has not been substantiated with credible evidence and therefore, it fails the test prescribed under explanation 1 to section 271(1)(C) of the Act. In view of the above, we find no merits in the contention of the assessee and accordingly, we held that the AO has rightly levied the minimum penalty of Rs. 66,89,000/- u/s. 271(1)(C) of the Act.

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

Order pronounced in the open court on 6th Oct, 2026

Sd/-	**Sd/-**
(Balakrishnan S.)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 6th Oct, 2026.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.