$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th August, 2026
Date of uploading: 19th August, 2026

\# **CNR No. DLHC010131662026**

\+ ITA 278/2026

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-7 .....Appellant

Through: Mr.Sunil Agarwal, SSC with Ms. Monica Benjamin and Mr. Gibran Naushad, JSCs, Mr. Adeeb Ahmad and Ms. Harshita Sharma and Ms. Laiba Arif, Advs.

versus

VITASTA ESTATES PVT LTD .....Respondent

Through: Mr. Arvind Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

Per* DINESH MEHTA, J. *(ORAL)

CM APPL. 20867/2026 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

CM APPL. 20866/2026 (Delay of 85 days in filing the appeal)

3. This is an application seeking condonation of delay of 85 days in filing the appeal.

4. For the reasons stated in the application, the delay in filing the appeal is condoned.

5. Application stands allowed.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

ITA 278/2026

6. The present appeal arises out of the order of the Income Tax Appellate Tribunal, Delhi 'G' Bench, New Delhi *(hereinafter referred to as 'the Tribunal')* passed on 19.08.2025 in Appeal No.1565/Delhi/2025 which was filed by the respondent-assessee herein, in relation to penalty that was imposed upon it under Section 271(1)(c) of the Income Tax Act, 1961 *(hereinafter referred to as 'the Act of 1961')* for Assessment Year 2008-09 by way of an order dated 28.06.2011.

7. The short issue which is involved in the present case is, as to whether the Assessing Officer's (AO) action of imposing penalty against the respondent-assessee was valid in the eyes of law, when his notice that preceded the order of penalty did not specifically mention or refer to the clause *qua* which the penalty was proposed.

8. The facts germane for the present purposes are that the respondent-assessee filed a return of income declaring a loss of Rs.11,07,23,687/- and its assessment was taken up for scrutiny under Section 143(3) of the Act of 1961, during which the AO found that the assessee had wrongly claimed revenue loss in relation to a sale of a parcel of land. During the course of proceedings, the assessee filed a revised return and pleaded that it was shown as revenue loss due to inadvertence and showed such loss to be a loss of capital in nature. Such revised return filed by the assessee was, however, not accepted by the AO and the assessment was made *vide* order dated 23.12.2010.

9. While framing the assessment, the AO decided to initiate penalty proceedings by recording thus:

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

"The Reply of the assessee has been considered and accordingly the income is assessed at NIL and no loss is allowed to be carried forward. However, the assessee has revised its claim after the issue of the notice u/s 143(2) and after the commencement of the scrutiny proceedings. Therefore I am satisfied that the assessee has furnished inaccurate particulars thereby concealing the particulars of Income and rendering itself liable for initiation of penalty proceedings u/s 271 (1) (c) read with section 274 of the I.T. Act, 1961. The same is being initiated separately.

Assessed accordingly at NIL. Charge tax and interest as per even dated ITNS 150 which is also a part of this assessment order. Issue demand notice and challan and a copy of ITNS 150. Penalty proceedings u/s 271(1) (c) of the 1. T. Act, 1961 are being initiated separately."

** [Emphasis supplied]*

10. And on the very same day i.e., 23.12.2010, a notice under Section 271(1)(c) of the Act of 1961 came to be issued to the respondent-assessee, *inter alia,* asking it to show cause as to why proceedings against it be not initiated observing thus: *"you have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1, 2, 3,4 and 5".*

11. The assessee filed its reply to the notice on 06.01.2011 and tried to justify its act and prayed that no penalty be imposed while relying upon various judgments as the assessee had voluntarily filed revised return.

12. The reply so filed by the assessee, however, did not find favour of the AO and a penalty order came to be passed on 28.06.2011, whereby the AO recorded that by declaring the loss, the assessee had filed inaccurate particulars of income in the return and thereby his case was covered by Section 271(1)(c) of the Act of 1961.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

13. Against the penalty so imposed, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and took various pleas, including the plea that since the AO had not recorded satisfaction about which limb of Section 271(1)(c) was attracted and since jurisdictional requirement of imposition of penalty was not satisfied, the penalty was liable to be set aside. Judgments of High Courts, including the judgment of Karnataka High Court and Delhi High Court in the cases of ***CIT v. Manjunatha Cotton and Ginning Factory***, reported in ***[2013] 359 ITR 565 (Karnataka)*** and ***PCIT v. Sahara India Life Insurance Co. Ltd.***, reported in ***(2021) 432 ITR 84 (Delhi)*** and ***PCIT v. Gragarious Projects Pvt. Ltd.***, reported in **[2024] SCC Online Del 8142** decided by Delhi High Court] were relied upon by the assessee.

14. The Commissioner of Income Tax (Appeals), however, rejected the assessee's appeal, for which, the assessee took up the matter before the Tribunal by way of preferring a second appeal which was registered as Appeal No. 1565/Del/2025 and came to be allowed by the Tribunal *vide* order impugned.

15. Mr. Agarwal, learned Senior Standing Counsel for the appellant argued that the Tribunal has seriously erred in quashing the assessment order and setting aside the penalty imposed by the AO by holding that the AO has failed to record satisfaction about the existence of jurisdictional fact. He painstakingly took the Court through the assessment order, more particularly its footnote and highlighted that the AO had recorded his due satisfaction about the necessity and justification for initiation of penalty proceedings. He argued that the requirement of initiating penalty proceedings stood duly satisfied.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

16. He submitted that the inscription that the assessee has furnished inaccurate particulars thereby concealing the particulars of income and rendering itself liable for penalty gives a clear indication that the assessee had furnished inaccurate particulars and simply because the notice that was issued to the respondent-assessee inadvertently did not score out one of the possible two contingencies, the imposition of penalty cannot be annulled or held to be illegal or void. In other words, he argued that the intention of the AO could well be gathered from the assessment order and it is quite evident from the same that the AO wanted to impose penalty upon the respondent-assessee for having furnished inaccurate particulars and since notice is only a procedural formality, if there was any irregularity or infirmity in the same, the Tribunal ought to have, at the best, remanded the matter to the AO for issuing fresh notice and deciding afresh.

17. Having argued so, Mr. Agarwal vehemently argued that the judgment of this Court rendered in the cases of ***PCIT v. Unitech Reliable Projects (P) Ltd.***, reported in ***[2023] 153 taxmann.com 495 (Delhi)*** and ***Gragarious Projects Pvt. Ltd.*** **(supra)** relied upon by the assessee before the Tribunal, do not lay down correct law, as the same have been passed without considering two binding judgments of Hon'ble the Supreme Court. He cited judgments of Hon'ble the Supreme Court rendered in the cases of ***CIT v. S.V. Angidi Chettiar***, reported in ***(1962) 44 ITR 739 (SC)*** and ***K.P. Madhusudan v. CIT***, reported in ***(2001) 251 ITR 99 (SC)***.

18. Reading the judgment rendered in the case of ***S.V. Angidi Chettiar*** **(supra)**, Mr. Agarwal submitted that the fact that there is an endorsement in the assessment order about the imposition of penalty is sufficient to fulfill the jurisdictional requirement and once the jurisdictional requirement is

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

fulfilled, the remaining part such as issuance of notice etc. remains to be a procedural part relating to observance of principles of natural justice and if there is something lacking on the part of the AO in following principles of natural justice, then, the course open for the Tribunal was to remand the matter, rather than quashing the penalty in its entirety.

19. He argued that the respondent-assessee cannot satisfy this Court that what prejudice has been caused to it, by not indicating which limb of Section 271(1)(c) is alleged to have been breached by it. Relying upon judgment in case of ***K.P. Madhusudan*** **(supra)**, learned senior standing counsel argued that para 10 of this judgment clearly postulates that mere mentioning of Section 271(1)(c) is enough. He argued that when Hon'ble the Supreme Court has held that non-mentioning of explanation does not render the notice to be invalid, then, simply because the AO has not mentioned which limb of Section 271(1)(c) he is relying upon, the notice cannot be held to be illegal and fatal to the penalty proceedings.

20. Mr. Arvind Kumar, learned counsel appearing for the respondent-assessee on the other hand, submitted that maybe while passing the assessment order, the AO had observed that penalty proceedings needs to be initiated against the assessee, but he argued at the same time that such observation, if read carefully, cannot be construed to be a satisfaction about the exact provision, or breach *qua* which the AO sought the assessee to be implicated or penalized. He argued that the AO’s observation was very general and the same was reflected in the notice he had issued on 23.12.2010 immediately after framing the assessment. He contended that while issuing the notice, AO was not clear as to why he was seeking to proceed against the assessee, for furnishing inaccurate particulars or for concealing income.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

21. Learned counsel argued that right since 2013, it has been a consistent view of various High Courts, first being Karnataka High Court, which view has been affirmed by Hon'ble the Supreme Court that while issuing notice proposing to levy penalty, the AO has to specify as to for which limb of Section 271(1)(c), he is seeking to proceed against the assessee. He argued that admittedly, the notice dated 23.12.2010 used the expression "or" and the AO did not choose any of the two expressions given under clause (c) of Section 271(1) of the Act of 1961. And thus, the same was *void ab-initio*.

22. He argued that the notice proposing to levy penalty cannot be said to be a formality – "it is a jurisdictional and foundational notice and it has to conform to statutory provision".

23. He submitted that in light of judgments of this court in the cases of ***Unitech Reliable Projects Private Limited*** **(supra)** and ***Gragarious Projects Pvt. Ltd*** **(supra)**, the appeal filed by the revenue deserves to be dismissed.

24. Heard learned counsel for the parties.

25. The issue which is involved in the present appeal as dealt with by the Tribunal on *prima-facie* appraisal of the facts and law, appears to be covered against the revenue by the judgment of this court in the case of ***Unitech Reliable Projects (P) Ltd.*** **(supra)** and ***Gragarious Projects Pvt. Ltd*** **(supra)**.

26. The distinction has been sought to be carved out by Mr. Agarwal by way of two judgments of Hon'ble the Supreme Court being ***S.V. Angidi Chettiar*** **(supra)** and ***K.P. Madhusudan*** **(supra)**. So far as judgment of Hon'ble the Supreme Court in the case of ***S.V. Angidi Chettiar*** **(supra)** is concerned, on sifting through the facts of the case, more particularly para no.10 thereof, we find that the same is clearly distinguishable, not because it

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

deals with Section 28 of the old Act, but because the issue and facts involved in that case and present case are quite different. In the case of ***S.V. Angidi Chettiar* (supra)**, the High Court of Madras had held that AO had not recorded a satisfaction about initiation of penalty and it is in that factual backdrop, Hon'ble the Supreme Court held that the High Court had erred in coming to this conclusion and in last four lines of para 10, Hon'ble the Supreme Court had observed that there is an endorsement at the foot of the assessment order by the Income Tax Officer that action under Section 28 had been taken for concealment of income.

27. It is, therefore, clear that in the case of ***S.V. Angidi Chettiar* (supra)**, the issue was as to whether before initiation of penalty proceeding, the recording of satisfaction is necessary while passing the assessment order itself or it is to be recorded during the assessment proceedings or separately while initiating the penalty proceedings. Whereas in the instant case, it is not a bone of contention – the AO has admittedly recorded a satisfaction that penalty proceedings are required to be initiated. It is a different matter that while recording such satisfaction, the AO was not clear as to which limb of clause (c) of Section 271(1) is attracted or for what breach would he penalize the assessee.

28. Moving on to the judgment in the case of ***K.P. Madhusudan* (supra)**, we find that the facts of the case before Hon'ble the Supreme Court as emanating from Bombay High Court and Karnataka High Court were, that the notice seeking to impose penalty did not make a reference of explanations to Section 271 and it was in that context, Hon'ble the Supreme Court has held that if a reference of Section has been given, reference of explanation was not necessary, as the same was implicit.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

29. But if the expression *"has concealed the particulars of his income or furnished inaccurate particulars of such income…."* as provided under Clause (c) of Section 271(1) is concerned, one has to be cognizant of one fact that the legislature has used the word "or" being a disjunctive, which means that these two contingencies are two alternative expressions, one is completely independent of the other.

30. If that be so, the AO is supposed to put the assessee to a notice that under which of the part of the clauses, he seeks to proceed against the assessee.

31. Unless the AO puts the assessee to notice as to which part of Clause (c) he seeks to invoke against the assessee, the assessee cannot be expected to defend his cause. The issuance of notice cannot be rendered nugatory or an empty formality, because furnishing inaccurate particulars and concealment of income though may lead to one end result, but they have different means. They certainly can have different explanation to be offered by the assessee and may have different treatments by the AO. The first judgment of Karnataka High Court in this regard rendered in case of ***Manjunatha Cotton & Ginning Factory*** **(supra)** followed by it in the case of ***CIT v. SSA's Emerald Meadows***, reported in ***[2016] 73 taxmann.com 241***, has been affirmed by Hon'ble the Supreme Court, as the SLP thereagainst has been rejected.

32. Similarly, Delhi High Court's judgment in the case of ***Unitech Reliable Projects (P) Ltd.*** **(supra)** has also been affirmed by Hon'ble the Supreme Court, because SLP preferred thereagainst too has been rejected, as has been reported in **(2024) 469 ITR 394 (SC)**.

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13

33. There are umpteen number of judgments of Delhi High Court, such as ***Gragarious Projects Pvt. Ltd.*** **(supra)** etc. We neither wish to multiply the judgments nor do we unnecessarily propose to burden our readers.

34. Hence, following the judgments of Delhi High Court and what we have observed hereinabove, we reject revenue's appeal.

35. Interlocutory applications also stand disposed of.

(DINESH MEHTA)
JUDGE

(RAJNEESH KUMAR GUPTA)
JUDGE

AUGUST 17, 2026
neelam

Signature Not Verified
Digitally Signed
By:NAVEEN KUMAR
Signing Date:19.08.2026
12:40:13