

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ एम एल मीना, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**Dr. M.L. MEENA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1564/CHNY/2018**  
निर्धारण वर्ष /Assessment Year: 2011-12

**Smt. Chidambaram Lathadevi,**  
Old No.2, New No.3,  
5<sup>th</sup> Street, Alwarpet,  
Chennai – 600 018.

**The Income Tax Officer,**  
v. Non-Corporate Ward 3(5),  
Chennai.

**PAN: ABJPL 1056H**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri S. Sridhar, Advocate  
: Shri AR. V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 16.03.2022  
घोषणा की तारीख/Date of Pronouncement : 31.03.2022

**आदेश /O R D E R**

**PER BENCH:**

This appeal by the assessee is arising out of the order of Learned Commissioner of Income Tax (Appeals)-4, Chennai in ITA No.208/2016-17/A.Y.2011-12/CIT(A)-4 dated 14.08.2017. The assessment was framed by the ITO, Business Ward XV(3), Chennai for the assessment year 2011-12 vide order dated 31.03.2014 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'). The

impugned penalty was levied by the ITO, Non-Corporate Ward 3(5), Chennai u/s.271(1)(c) of the Act vide order dated 30.12.2016.

2. At the outset, the Id.counsel for the assessee stated that the assessee has raised jurisdictional issue that there is no satisfaction or specific charge for levy of penalty u/s.271(1)(c) of the Act. For this, assessee's counsel drew our attention to Ground No.5, which reads as under:-

“5. The CIT(Appeals) failed to appreciate that in any event the initiation of the penalty proceedings without recording satisfaction on the precise charge of either concealment of income or furnishing inaccurate particulars of income u/s 271(1)(c) of the Act was bad in law and consequently ought to have appreciated that the penalty imposed in such circumstances should be construed as not sustainable in view of the judicial trend on the said technical issue.”

3. The Id.counsel for the assessee took us through the assessee's paper-book and drew our attention to page 1 i.e., notice issued u/s.274 r.w.s. 271(1)(c) of the Act dated 31.03.2014. The Id.counsel stated that as per this notice, the AO i.e., the ITO, Business Ward XV(3), Chennai has not strike of the appropriate charge and for which charge he has initiated penalty u/s.271(1)(c) of the Act. The Id.counsel for the assessee stated that this issue is covered in favour of assessee by the decision of ITAT, Chennai Benches in the following cases:-

1. Original Kerala Jewellers vs. DCIT, ITA No.2987/Chny/2017
2. R. Pannerselvam vs. ACIT in ITA No.789/Chny/2018
3. M/s. Prakash Homes vs. ITO in ITA No.2262/Chny/2018
4. Hon'ble Bombay High Court in the case CIT vs. Khimji Bhanjee & Co, 32 CTR 296.

4. On the other hand, the Id. Senior DR stated that the issue is covered by the Jurisdictional High Court decision in the case of Gangotri Textiles Ltd., [2021] 276 Taxman 356, wherein the Hon'ble High Court has considered the relevant in para 10 as under:-

10. The SLP filed by the assessee against the above decision was dismissed, Sundaram Finance Ltd. (supra). Further, we find that in the reply given by the assessee on 08.04.2015, the assessee would state that there is no concealment any income or furnishing any inaccurate particulars. Therefore, the assessee understood the notice to be a notice for concealment of any income or furnishing any inaccurate particulars and therefore the assessee cannot be permitted to raise a contention before this Court for the first time alleging defect in the notice. Thus, in the considered view of this Court, the assessee is precluded from raising any such contention regarding the validity of the notice.

According to Id. Senior DR, the issue of defect in notice or specific charge for levy of penalty is covered against assessee.

5. In reply, the Id.counsel for the assessee stated that this issue is covered by the decision of Hon'ble High Court of Madras in the case of CIT vs.Original Kerala Jewellers in TCA No.717 of 2018,order

dated 18.12.2018, wherein the Hon'ble High Court considering the Hon'ble Karnataka High Court decision in the case of CIT vs. Manjunatha Cotton and Ginning Factory, (2013) 359 ITR 565, has deleted the penalty by observing as under:-

4. The Tribunal referred to and relied upon the decision of the Division Bench of the High Court of Karnataka in C.I.T. Vs. Manjunatha Cotton and Ginning Factory [reported in (2013)359 ITR 565]. The Division Bench after analysing the subject in an elaborate manner and relating to several decisions of the Hon'ble Supreme Court held that merely because the assessee agreed for addition and accordingly, assessment order was passed on the basis of addition and when the assessee paid the tax and the interest thereof in the absence of any material on record to show the concealment of income, it cannot be inferred that the said addition is on account of concealment, so as to levy penalty under Section 271(1)(c) of the Act.

5. We find no error in the order passed by the Tribunal especially when it is admitted that the decision in C.I.T. Vs. Manjunatha Cotton and Ginning Factory has attained finality. Thus, for the above reasons, the appeal filed by the Revenue is dismissed and the substantial questions of law are answered against the Revenue and in favour of the assessee.

5.1 The Id.counsel for the assessee, further stated that even now the issue of Gangotri Textiles Ltd., *supra*, of Hon'ble Madras High Court has been considered by the Hon'ble Madras High Court further in the case of Babuji Jacob vs. ITO, [2021] 430 ITR 259 and has distinguished Sundaram Finance Ltd., vs. ACIT, [2018] 93 taxmann.com 250 and observed in para 32 and 33 as under:-

32. The decision of this Court in the case of Sundaram Finance Ltd., was couched on a different factual position wherein the Court rejected the plea of the assessee, which was a limited company, when they raised an argument with regard to the validity of the notice for the first time before the High Court and considering the administrative set up of the said assessee and the fact that the assessee was never prejudiced on account of the alleged defect, the Court rejected the argument of the assessee.

33. In the case on hand, we find that at the first instance, while replying to the penalty show cause notice dated 30.3.2016, the assessee raised a specific plea that there was no concealment of income, that he had not furnished inaccurate particulars of income and that the notice was not proper. Therefore, the phraseology, which was adopted by the assessee, if read as a whole, would clearly show that he had objected to the issuance of the notice and as there was no basis for issuance of the notice under Section 271(1)(c) of the Act, both limbs in the said provision do not get attracted. Hence, the decision of this Court in the case of Sundaram Finance Ltd., cannot be applied.

5.2 The Id.counsel stated that this issue is squarely covered in favour of assessee and against Revenue.

6. After hearing both the sides and going through the facts, we noted that the Hon'ble Madras High Court in its latest decision in the case of Babuji Jacob, *supra*, has categorically held that there is no basis for issuance of notice u/s.271(1)(c) of the Act, where both limbs in the said provision do not get attracted. The Hon'ble Madras High Court has distinguished its own decision of Sundaram Finance Ltd., *supra*, and validity of notice issued u/s.271(1)(c) r.w.s. 274 of

the Act was decided in favour of the assessee. Respectfully following the same, as in the present case the AO has not strike of the inappropriate charge, we delete the penalty levied by the AO and confirmed by CIT(A). We direct the AO accordingly.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 31<sup>st</sup> March, 2022 at Chennai.

Sd/-

(डॉ एम एल मीना)

**(Dr. M.L. MEENA)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> March, 2022

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |