

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:2197/CHNY/2016

निर्धारण वर्ष /Assessment Year:2009-10

Shri R. Sathiamurthy,
No.31, S.P. Koil Street,
Chidambaram

The Income Tax Officer,
v. Ward 1(3),
Cuddalore -2.

PAN: AASPS 4669K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 18.05.2022

घोषणा की तारीख/Date of Pronouncement

: 25.05.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals), Puducherry in ITA No.434/CIT(A)-PDY/2013-14 dated 09.05.2016. The assessment was framed by the ITO, Ward 1(3), Cuddalore for the assessment year 2009-10 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.12.2011. The penalty under dispute u/s.271(1)(c) of the Act was levied by the ITO, Ward (3), Cuddalore vide his order dated 28.06.2012.

2. At the outset, the Id.counsel for the assessee stated that the penalty u/s.271(1)(c) of the Act is without jurisdiction and for this, he drew our attention to first two grounds raised, which reads as under:-

“1. The order of the CIT(A) is contrary to law and opposed to the facts and circumstances of the case and opposed to fair procedure.

2. The CIT(A) erred in confirming the penalty imposed under section 271(1)(c) of the I.T. Act.

3. The Id.counsel for the assessee filed copy of notice issued and stated that from the very notice issued u/s.274 r.w.s. 271(1)(c) of the Act, it is clear that the AO has not strike out the relevant portion and it is not clear for which charge the AO has levied the penalty, whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Id.counsel for the assessee stated that this issue is now covered in favor of assessee by Full Bench decision of Hon'ble Bombay High Court in the case of Mr. Mohd. Farhan A. Shaikh v. ACIT, (2021) 434 ITR 1 and the Hon'ble Jurisdictional High Court decision in the case of CIT vs. Original Kerala Jewellers in TCA No.717 of 2018.

4. On the other hand, the Id. Senior DR stated that this issue is covered in favour of Revenue by Hon'ble Jurisdictional High Court

decision in the case of Gangotri Textiles Ltd., [2021] 276 Taxman 356.

5. In reply, the Id.counsel stated that the Hon'ble Madras High Court in the case of Gangotri Textiles Ltd., *supra* has decided the issue on its peculiar facts of case stating that this issue was raised before Hon'ble High Court for the first time and before Hon'ble High Court, the assessee being a listed company should pointed out the factual as well a legal issue at the very first instance. The Hon'ble High Court noted that the assessee neither before AO nor before the first appellate authority or before Tribunal or before Hon'ble High Court when the tax appeal was filed has not raised the issue but was raised for the first time after 10 years. Subsequently, the Id.counsel for the assessee stated that the Hon'ble Madras High Court has clarified the decision of Gangotri Textiles Ltd., in the case of Babuji Jacob vs. ITO, [2021] 430 ITR 259 and noted in para 31 & 32 that the facts in Gangotri Textiles Ltd., and Sundaram Finance Ltd., were on different factual position wherein the court rejected the plea of the assessee as regards to the argument of validity of notice, which was raised for the first time before Hon'ble High Court and not before the lower authorities. The relevant observation of Hon'ble High Court in para 31 & 32 reads as under:-

31. 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.

32. 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)© 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.

6. We noted that this issue has been considered by the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory, (2013) 359 ITR 565 in great detail wherein the defect in notice is treated as jurisdictional issue. Even the Hon'ble Bombay High Court, Full Bench in the case of Mr. Mohd. Farhan A. Shaikh, *supra*, has considered exactly an identical issue. Even the Jurisdictional High Court in the cases of Babuji Jacob, *supra* and Original Kerala Jewellers, *supra* has considered identical situation and held that the very initiation of penalty proceedings on a defective notice is invalid and it do not warrant imposition of penalty u/s.271(1)(c) of the Act on the assessee.

7. As the issue of defect in notice i.e., jurisdictional issue, by the present assessee, being individual, raised before CIT(A) for the first time and the CIT(A) simpliciter rejected the plea of the assessee by observing in para 7.3 as under:-

“7.3 The content of the entire assessment order itself is sufficient reason for initiating penalty proceedings u/s.271(1)(c); the AO has duly initiated penalty proceedings in the Assessment Order itself; hence, there is no need to record reasons for initiating penalty proceedings. Accordingly, ground No.5 is also rejected.”

It means that the assessee is vigilant from the beginning and raised this issue of defect in notice for the first time before CIT(A) and assessee being individual, the issue is squarely covered by the decision of Jurisdictional High Court in the case of Babuji Jacob, *supra*, and hence, we delete the penalty and allow the appeal of assessee.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 25th May, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th May, 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. |