आयकर अपीलीय अधिकरण "सी" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ **ITA No.1209/Chny/2017**
(**निर्धारण वर्ष** / Assessment Year: 2009-10)

Shri D. Senthil Kumar No.25, Rathinasabapathy Street, Co-operative A Colony, K.K.Pudur Coimbatore-641 038.	**बनाम**/ Vs.	**The ACIT** Circle-II Coimbatore.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AJUPS-1904-Q**		
(□ पीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri S. Sridhar (Advocate) – Ld.AR
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri P. Sajit Kumar (JCIT) – Ld. Sr. DR

सुनवाईकीतारीख/ **Date of Hearing**	:	12-04-2023
घोषणाकीतारीख / **Date of Pronouncement**	:	19-05-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by confirmation of penalty u/s 271(1)(c) for Rs.10,36,114/- for Assessment Year (AY) 2009-10, the assessee is in further appeal before us. The impugned order has been passed by learned Commissioner of Income Tax (Appeals)-2, Coimbatore [CIT(A)] on 31-03-2017 in the matter of impugned penalty levied by Ld. AO vide order dated 26-09-2014. In the penalty order, the penalty has been

levied on the allegation that the assessee furnished inaccurate particulars of income and concealed his income. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

2.1 The Ld. AR, at the outset, drew our attention to legal ground No. 3 in which the assessee submit that the show-cause notice as issued during penalty proceedings was invalid and passed without jurisdiction and hence, not sustainable in law. The said ground read as under: -

> 3. The CIT (Appeals) failed to appreciate that the order imposing penalty under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

2.2 The Ld. AR submitted that a specific charge was not framed against the assessee in the show-cause notice issued u/s 274 r.w.s. 271(1)(c) and the same would vitiate the penalty proceedings as per settled legal position. The Ld. AR also submitted that assessee furnished bona-fide explanation which has been rejected by revenue. However, the same would not lead to imposition of penalty in a mechanical manner.

2.3 The Ld. Sr. DR, on the other hand, vehemently contested the legal grounds urged by the assessee at this stage. The Ld. AR. DR submitted that none of the judicial decisions have ever considered the fact that Sec.274 merely postulates opportunity of hearing to the assessee. There is no requirement of issuance of notice and even the notice is a non-statutory notice. The said opportunity could be given orally or by way of order sheet entries. The penalty is initiated during assessment proceedings and there is no mandate in law to issue any notice to the assessee for initiating penalty proceedings against the assessee. The

Ld. Dr also submitted that the amount offered by the assessee was not voluntary declaration and therefore, the impugned penalty was justified.

2.4 The Ld. Sr. DR sought liberty to file written submissions which was granted to him. The written submissions filed by Ld. Sr. DR read as under: -

> During the course of hearing, the assessee's counsel raised a fresh ground stating that the show cause notice issued on 08.03.2014 is vague and hence the consequential penalty order passed on 26.09.2014 would get vitiated in the absence of precise charge.
>
> In the first instance, the raising of fresh ground at the stage of hearing which was not a part of original Grounds of Appeal before the Tribunal nor before the CIT(A) cannot be entertained and should not be entertained, as it amounts to change in opinion and an afterthought reaction. The assessee has not made any ground, how it is legal in nature.
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> Even if the Tribunal thinks the same can be entertained at any stage of the appellate proceedings, then the same need to be referred back to the CIT(A) for adjudication of the matter in line with the principles of natural justice. The reason that the ITAT being the last fact-finding authority and if it sits on adjudicating on this ground, which was never in appeal before the lower authority, it will cause irreparable damage the revenue by denial of right to be adjudicated by at-least two authorities before finalization of a disputed matter.
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> Secondly, during the course of proceedings, the member had asked the Department as to why the decision of Mumbai High Court in the case of M/s. Mohammed Farhan A Shaik Vs DCIT, Central Circle - 1, Belgaum as reported in 125 taxmann.com 253 (Bombay) would not be applicable in the present case. On these, the following are the submission of the Department.
>
> The captioned decision has heavily relied on the decision of the Karnataka High Court in the case of M/s. Manjunatha Cotton and Ginning factory as reported in 396 ITR 398, in which the honourable judiciary had summarized the scope of penalty proceedings u/s 271(1)(c) r.w.s. 274 and thus concluded in Para 180 and 181 as under:
>
> *"180. One course of action before us is curing a defect in the notice by referring to the assessment order, which may or may not contain reasons for the penalty proceedings. The other course of action is the prevention of defect in the notice-and that prevention takes just a tick mark. Prudence demands prevention is better than cure.*
>
> *Answers:*
>
> *Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271 (1)(c), does a mere defect in the notice-not striking off the irrelevant matter-vitiate the penalty proceedings?*
>
> *181. It does. <u>The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action **only through the***

statutory notice under section 271(1)(c), read with section 274 of IT Act *True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness•*

On careful study of these case decisions and various other decisions of High Courts and Supreme Courts which the Hon'ble court has relied on while concluding as mentioned above, one thing is startling in all these case decisions uniformly across that nobody had brought to the notice of these Honourable Judiciary on the change of language used by the legislature with respect to 274 of the Act, which is distinct from the requirement of other provisions of the act such as 143(2), 148, etc., wherein also proceeding are initiated against an assessee under the Act. The language use of Section 274(1) is reproduced as under:

"No order imposing penalty under this chapter shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard .."

This language use, when in comparison with Section 143(2), which is also is reproduced as under:

"Where a return has been furnished under Section 139, or in response to a notice under subsection (1) of Section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the asessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee ***a notice requiring him,*** *on a date to be specified therein either to attend the office of the Assessing Officer or to produce or cause to be produced before the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return"*

Similarly, the language use in Section 148 which is reproduced as under:

"Before making the assessment, reassessment or recomputation under Section 147, the Assessing Officer ***shall serve on the assessee a notice*** *requiring him to furnish within such period, as may be specified in the notice, a return o{his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year. in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139*".

From the above, it is clear that the legislation did not mandate issuance of a notice for Penalty proceeding hearing whereas for all other proceeding hearing, the legislation mandated issuance of a notice. The logic being, u/s 271 of the Income tax Act, penalty proceedings are initiated or have to be initiated during the pendency of assessment and not subsequent to an assessment. Though the assessment proceeding and penalty proceeding are two independent proceeding in the act, **penalty proceedings are initiated during the course of assessment** and could be concluded under the law during the course of assessment **or** subsequent to passing the assessment order and before an appeal could be filed **or** subsequent to an order passed by the appellate authorities.

Now coming to the issue of as to how the requirement of assessee to be heard and the reasonable opportunity of being heard can be met u/s 274 by without an issuance of the notice, it can be answered as under:

Since the law does not mandate specific requirement to issue a notice, the opportunity of being heard can be communicated orally across the table or through a telephonic call or through a letter and all these means adopted duly recorded through an order sheet entry for having given such opportunity. The reliance on issue of a notice under the law as a prerequisite requirement for initiation and levy of penalty has not been legally warranted by the law itself. The only requirement under the law is the Department has to demonstrate that the assessee been heard and reasonable opportunity of being heard has been provided. Such demonstration could be through order sheet noting, or through other circumstantial evidences or could even be through issuance of letter/notice **in** a pre-printed format.

Thus, even if the Assessing Officers had issued some notice in a pre-printed format, such notice cannot be under any stretch be treated as a statutory notice mandated to be issued under the Law. Wherever the law has mandated issuance of notice, even there, in many instances, the law itself has given liberty for the officers of the Department to frame the language of such notices in whatsoever manner in which they may deem fit. The examples for these are when notices are mentioned to be issued u/s 142(1) or u/s 143(2) or u/s. 148 etc. However, the same law has been stringent when it comes to some other provisions where law mandates issuance of notice. **It** had specifically mandated issuance of only a Statutory prescribed notices to be issued. All such statutory prescribed notices are prescribed under the Income tax Rules, 1962 and published. As can be seen from these rules, the only statutorily prescribed notice for any Assessment or Penalty proceeding is notice that is required to be served u/s 156 of the Act.

Since, none of these fine distinguishable facts of use of language by the legislation has been brought before any of the judicial forum as evident from the recordings made of submissions by the parties involved in those judgments; none of these judiciaries had an opportunity to adjudicate these differences in use of language, its intent and impacts. **It** may be submitted that the same judiciary would have concluded in totally a different manner when these sets of facts were to have been brought to their notice.

For this specific reason, it is submitted that a fresh look on the Penalty proceeding initiated in line with the law requirement be adjudicated by the Honourable Tribunal without relying on any of the existing judicial pronouncements as in none of such judicial pronouncements, these facts were brought before such Judicial forum.

The notice, which the assessee is relying on, even if it is in the pre-printed format cannot, under no such imagination can be considered as a statutorily prescribed notice under the Act.

It may be mentioned that since the Penalty proceedings are initiated during the course of assessment proceedings and such recordings are made and initiations are communicated in the assessment order in line with the provisions of Section 271(1B) the tax payer cannot take a shelter that he was not aware why the Penalty proceedings have been initiated.

In the instant case, the assessee was found to have concealed its real income consequent to survey conducted based on an original return filed u/s 139, wherein he had admitted only Rs.1,00,920/- as his income. Consequent to such finding when the case was reopened u/s 148, the assessee filed the return admitting the

concealed income wherein the assessee admitted an income of Rs.31,41,390/- by offering additional income Rs.30,40,470/-. Thus the assessee was fully aware as to why the penalty proceedings was initiated much before even conclusion of the assessment proceeding. The so-called defective notice under which he is now taking shelter is mischievous and ill conceived. If the assessee had even an iota of doubt on as to why penalty u/s 271(1)(c) was initiated, he could have very well sought the reason during the course of penalty proceedings. The very reason the assessee did not seek such clarification, clearly demonstrates that he was never in doubt on the reasons why the penalty proceeding was initiated. Further, he never raised this issue of defective communication and the confusion in mind created on account of such defective communication either in his appeal before CIT(A) or in the initial Grounds of Appeal filed before the ITAT. Assessee now, just to salvage payment of Penalty on his concealed income, as an afterthought has resorted in taking shelter as a lame excuse under the defective notice. The assessee through his counsel has not submitted even an iota of evidence to prove that how such a notice claimed to be defective had created a confusion in his minds on the reasons for initiation of penalty and how such confusion had prevented him from the submission of correct response, as correctly held by the Jurisdictional High Court of Madras in the case of M/s. Sundaram Finance Ltd Vs. Assistant Commissioner of Income tax dated 23.04.2018 in T.C. (Appeal) no. 876 and 877 of 2008 (a copy of which is enclosed for your ready reference).

Even if it is admitted that for hearing an assessee a notice will have to be issued as per the provisions u/s 274 of the Income tax Act, such notice being a non-statutory prescribed notice, such omissions and commissions in such communications are curable and cannot be held as invalid u/s 292B of the Income tax Act unless the assessee counsel is able to demonstrate as to how the assessee was prevented from knowing the intent and purpose for which he was in receipt of this notice and hence could not submit proper reply and evidence in his defense during the course of penalty proceedings. <u>The counsel could have, at least now, brought to the notice of the bench that how different would have been the submission if such a notice had clearly informed the actual reason for which the penalty proceedings have been initiated. This should be the correct test before any decision in this matter could be taken.”</u>

2.5 Countering the same, Ld. AR has also filed gist of submissions which read as under: -

The penalty u/s 271(1)(c) of the Act is challenged on various facets in the captioned appeal and according to the appellant the revised return of income filed on 02.11.2012 would negate the presumption of concealment of income or furnishing inaccurate particulars of income.

The show cause notice issued on 08.03.2014 is vague and hence the consequential penalty order passed on 26.09.2014 would get vitiated in the absence of precise charge.

Moreover, the income offered in the revised return of income comprised of NRI receipts was bonafidely presumed to be non-taxable and hence the said bonafide

belief would constitute reasonable cause for deleting the penalty imposed in relation thereto.
The findings in the Para 4.1 of the impugned order are incorrect and completely opposed to the decisions of the Supreme Court in the case 322 ITR 158 and 25 taxmann.com 400.
Rejection of explanation would not automatically attract penal provisions u/s. 271(1)(c) of the Act.
The legal ground raised by the Appellant captured in Ground No. 3 on the validity or otherwise of the penalty order passed was permitted to be addressed by the Bench at the time of hearing and for adjudication of legal issues the facts required in relation thereto are very much available on record, thereby vitiating the technical objections raised by the DR in his written submissions received on 01.05.2023.
Moreover, the lack of satisfaction in the assessment order passed vide order dated 08.03.2014 which was translated into the SCN should be reckoned as nullity in law as well vitiate the consequential penalty order completely.
The Assessing Officer was not sure even at the point of completing the assessment order and he records in the assessment order as *'the assessee has concealed / filed inaccurate particulars of income and therefore penalty proceedings u/s 271 (1)(c) is initiated.'*
The issue of the SCN whether it is statutory or non-statutory notice has no relevance in the light of indecisiveness of the Assessing Officer in commencing the proceedings of penalty in either of the limbs.
Even in the context of the SCN being a non-statutory notice to provide an opportunity to the Assessee, the said non statutory notice should be precise and also reflect the satisfaction recorded in the assessment order. In the absence of specific charge by recording Assessing Officer's satisfaction in the assessment order, the consequential penalty order passed should fall to the ground.
The Larger Bench of the Bombay High Court reported in 125 Taxmann.com 253 has covered all the facets of the issue on hand and the Appellant pleads for cancelling the said penalty order in terms of the law decided in the said larger bench decision.
The Jurisdictional Bench of the Income Tax Appellate Tribunal in the case decided on 05.03.2018 in ITA No. 2987 & 2988/2017 had entertained the legal issue raised before the Income Tax Appellate Tribunal and quashed the penalty order on the technical ground now adjudicated by the Bench in the present case.
The above decision of the Jurisdictional Bench of the Income Tax Appellate Tribunal in the case of M/s Original Kerala Jewellers is affirmed by the Madras High Court in TCA No. 717/2018 by dismissing the appeal filed by the Revenue. As a consequence, the technical issue raised by the Department has no sanctity and accordingly the said technical ground is liable to be rejected.
The notice issued u/s 271(1)c) of the Act by the Revenue and the assessment order passed in the present case are placed on record to establish the lack of precise charge with a prayer to quash the penalty order passed.

2.6 Having heard rival submissions, oral as well as written and after considering the ratio of various judicial decisions, our adjudication would be as under.

Our findings and Adjudication

3. From the fact, it emerges that the assessee was assessed u/s 143(3) r.w.s. 147 of the Act on 08.03.2014 wherein returned income filed by the assessee was substantially accepted barring minor addition of Rs.7,818/-. In the body of assessment order, Ld. AO initiated penalty proceedings against the assessee since the assessee admitted additional income of Rs.31.41 Lacs in the return of income vis-à-vis income declared in the original return. In the concluding part of the assessment order, Ld. AO observed as under: -

> *'The assessee has concealed / filed inaccurate particulars of income and therefore penalty proceedings u/s 271 (1)(c) is initiated.'*

It could be seen that Ld. AO has invoked both the limbs against the assessee in the assessment order.

4. Subsequently, notice u/s 274 r.w.s. 271(1)(c) was issued to the assessee on 10.03.2014 which read as under: -

> *"Whereas in the course of proceedings before me for the assessment year 2009-10, it appears to me that you:-*
>
> **have without reasonable cause failed to furnish me within of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which your were required to furnish under section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No……Dated…….or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.*
>
> **have without reasonable cause failed to comply with notice under section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under section 142(1)/143(2) of the Income-tax Act, 1961.*
>
> *<u>have concealed the particulars of your income or furnished inaccurate particulars of such income.</u>*
>
> *You are hereby required to appear before me at 11.00 A.M on 07-04-2014 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If, you do not wish to avail yourself of this opportunity of being heard in person or through*

> *authorized representative, you may show cause in writing on or before the above date which will be duly considered before any such order is made under section 271(1)*

Upon perusal of the notice, it could be seen that Ld. AO has failed to specify the exact limb which was applicable to the case of the assessee. The exact phrase which is applicable to the case of the assessee has not been ticked-off. Further, there is no marking of the appropriate limb i.e., concealed the particulars of income or furnished inaccurate particulars of income.

5. Though the assessee assailed proposed penalty, however, Ld. AO, in para-4 alleged that the mere claiming income as exempt without any evidence will tantamount to concealment of income. However, in paras-5 & 6, Ld. AO held as under: -

> 5. Failure of the assessee to give credible explanation regarding the suppression of income while filing original return of income would clearly lead us to the inference that he had furnished inaccurate particulars of income and concealed his income while filing return of income within the meaning of section 271(1)(C) read with explanation (1). If no explanation is offered or explanation is found to be false the penalty will be exigible.
> 6. In view of the above, I deem it fit to impose penalty u/s 271(1)(c) of the Act, as there is a concealment of income to the extent of……..”

Apparently, the two limbs i.e. ‘furnished inaccurate particulars of income’ and ‘concealment of income’ has been used inter-changeably while initiating the penalty proceedings in the assessment order as well as in the penalty order. The appropriate limb was also not marked in the show-cause notice. On the basis of the same, we would conclude that no specific charge has been framed against the assessee and Ld. AO remained unsure as to which limb was actually applicable to the case of the assessee.

6. Since the legal issue raised by the assessee goes to the root of the matter, we take up the same first. The Ld. Sr. DR has argued that this is a factual issue and therefore, the same should be remitted back to the file of lower authorities so as to enable them to take a view in the matter. However, we are not convinced with this argument. It is undisputed position that the assessee has been issued only one show-cause notice during the course of penalty proceedings. The assessment order, penalty order as well as impugned order is available before us. The adjudication of this legal ground does not require appreciation of new facts and the adjudication of the same is not dependent on any other material which is not available on record. The binding judicial precedents as cited by Ld. AR duly supports the case of the assessee. Therefore, we see no reason to restore this legal ground to the file of lower authorities and accordingly, proceed to adjudicate the same in the light of rival arguments made before us.

7. The provisions of Sec.274 postulate that no order imposing penalty shall be made unless the assessee has been heard or has been given reasonable opportunity of being heard. The aforesaid requirement is not mere formality. Despite the fact that no statutory notice has been prescribed in this regard to afford opportunity of hearing to the assessee, it is imperative that the show-cause notice is given in writing and it specifies, in clear terms, charge against the assessee since the accused must know the grounds which he is expected to address. A vague notice, in our considered opinion, would clearly not fulfill the requirement of the statutory provisions. The argument of Ld. Sr. DR that the notice could be given orally, telephonically or through order sheet entries could not be

accepted, at all since the opportunity of hearing has to be given only through a written notice only show-causing the assessee so as to enable him to meet the proposed action of Ld. AO. Whether the notice is statutory or non-statutory would not make any difference. The opportunity of hearing as envisaged u/s 274, in itself, imply that the assessee is made aware of the exact charge which he has to meet since the same is based on principle of natural justice that nobody should be condemned unheard. Therefore, the arguments taken by Ld. Sr. DR, in this regard, could not be accepted.

8. In our considered opinion, concealment of income and furnishing of inaccurate particulars of income are two different charges. These two expressions, in terms of ratio of various binding judicial precedents, carry different connotation / charges and non-framing of specific charge against the assessee would vitiate the penalty proceedings. The penalty could be levied only for a specific charge. Furnishing of inaccurate particulars of income would arise in a situation where the assessee has not disclosed the particulars correctly or the particulars disclosed by the assessee are found to be incorrect whereas concealment of particulars of income would mean that the assessee has concealed the income and has not reflected certain income, at all, in its return of income. Therefore, for each of the addition, Ld. AO has to specify as to which limb was applicable to the facts of the case and it could not be left to mere presumption or guess work of the assessee. Framing of specific charges is sine-qua-non for levy of penalty since the assessee must be put to allegations for which the penalty was being levied. In the absence of such a specific charge, the penalty would be bad in law and the same

is not a curable defect u/s 292BB. This position has been settled in numerous binding judicial precedents. Considering the same, we would have no hesitation in holding that these two charges are quite different charges and carry different connotation / meaning. The non-framing of specific charge would make the notice defective. It did not specify the ground under which the penalty is proposed. The notice does not delete the appropriate words and in the assessment order as well as in the penalty order, both limbs have been pressed against the assessee. Therefore, we would hold that the notice was issued in a mechanical manner and hence, not sustainable in the eye of law.

9. We find that this view has been taken by co-ordinate bench of this Tribunal in the cited decision of **M/s PVP Ventures Ltd. vs. DCIT (supra)** as under: -

> *"6. However, the said observations, in our considered opinion, are in contradiction to settled legal position. In our considered opinion, concealment of income and furnishing of inaccurate particulars of income are two different charges. These two expressions, in terms of ratio of various binding judicial precedents, carry different connotation / charges and non-framing of specific charge against the assessee would vitiate the penalty proceedings. The penalty could be levied only for a specific charge. Furnishing of inaccurate particulars of income means, when the assessee has not disclosed the particulars correctly or the particulars disclosed by the assessee are found to be incorrect whereas concealment of particulars of income would mean that the assessee has concealed the income and has not reflected certain income in its return of income. Therefore, for each of the addition, Ld. AO has to specify as to which limb was applicable to the facts of the case and it could not be left to mere presumption or guess work of the assessee. Framing of specific charges is sine-qua-non for levy of penalty since the assessee must be put to allegations for which the penalty was being levied. In the absence of such a specific charge, the penalty would be bad in law and the same is not a curable defect u/s 292BB. This position has been settled in numerous binding judicial precedents.*
>
> *7. It could be seen that the show-cause notice issued u/s 274 r.w.s 271 on 31.12.2010 is a vague notice in a printed form without striking-off irrelevant portion and do not specify the exact charge for each head of addition for which the assessee was being penalized and therefore, it was a clear case of non-application of mind while initiating penalty against the assessee. Even in the*

body of penalty order, no specific charge has been framed for each head of addition and Ld. AO merely stated that both the limbs were applicable to the case of the assessee which was clear from the nature of additions itself.

8. On the given factual matrix, the decision of Hon'ble High Court of Madras in ***Babuji Jacob Vs. ITO (430 ITR 259; 08.12.2020)*** *would apply. The Hon'ble Court, inter-alia, held that since the notice under section 271(1)(c) did not specifically state as to whether assessee was guilty of concealing particulars of his income or had furnished inaccurate particulars of income, the impugned penalty was invalid and same was to be set aside. The relevant adjudication of Hon'ble Court in this case was as under: -*

> *25. This finding of the Assessing Officer is incorrect because while completing the assessment under Section 143(3) of the Act, there was no allegation against the assessee as to furnishing of inaccurate particulars. But, the Assessing Officer did not accept the explanation offered by the assessee and made certain additions, which will not automatically result in interpreting the same as furnishing of inaccurate particulars. Further, we find that there is no specific finding as regards the concealment against the assessee because, on facts, it has been established before the Assessing Officer while completing the assessment under Section 143(3) of the Act that all transactions were through banking channels. Hence, the argument of Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue that both limbs of Section 271(1)(c) of the Act are attracted has to necessarily fall. Hence, we hold that there is inherent defect in the notice dated 30.3.2016 issued under Section 271(1)(c) of the Act, as it will vitiate the entire proceedings.*
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> *26. Since we have heard the learned counsel on the correctness of the orders passed by the Assessing Officer, the CIT(A) and the Tribunal on the merits of the matter, we proceed to discuss the other issues as well.*
>
> *27. The CIT(A), while confirming the order of penalty, took note of the order passed by the Assessing Officer wherein the Assessing Officer rejected the explanation offered by the assessee, which ultimately resulted in an addition and the assessment was completed vide order dated 30.3.2016. The question would be as to whether rejection of the explanation and the consequential addition would automatically result in an order of penalty.*
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> *28. Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue seeks to substantiate her case by relying upon the decision of the Hon'ble Supreme Court in the case of Mak Data (P) Ltd. Vs. CIT, II [reported in (2013) 38 Taxmann.com 448] wherein it was held that voluntary disclosure does not release the assessee from mischief of penalty proceedings under Section 271(1)(c) of the Act and in terms of the said provision, the Assessing Officer has to satisfy as to whether the penalty proceedings have to 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 into writing.*
>
> *29. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan Vs. CIT [reported in (2001) 118 Taxman 324]. The decision of the Hon'ble Supreme Court in the case of Mak Data (P)*

Ltd., was taken note of by the Division Bench of this Court, to which, one of us (TSSJ) was a party, in the case of CIT, Chennai-IV Vs. Gem Granites (Karnataka) [reported in (2014) 42 Taxmann.com 493] and the aspect as to how onus/burden of proof shifts from the assessee to the Revenue when penalty proceedings are initiated, is held in thefollowing terms :

> *"11. In a recent decision of the Hon'ble Supreme Court in Civil Appeal No.9772 of 2013, dated 30.10.2013 (Mak Data P. Ltd., vs. Commissioner of Income Tax-II), the Hon'ble Supreme Court while considering theExplanation to Section 271(1), held that the question would be whether the assessee had offered an explanation for concealment of particulars of income or furnishing inaccurate particulars of income and the Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer between the reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence and when the initial onus placed by the explanation, has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted their income and not otherwise. Factually, we find that the onus cast upon the assessee has been discharged by giving a cogent and reliable explanation. Therefore, if the department did not agree with the explanation, then the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. In the instant case, such onus which shifted on the department has not been discharged. In the circumstances, we do not find that there is any ground for this Court to substitute our interfere with the finding of the Tribunal on the aspect of the bonafides of the conduct of the assessee."*

30. In the instant case, the assessee offered an explanation and we find the explanation to be cogent because all deposits were made through banking channels and out of two properties sold, the Assessing Officer accepted the assessee's stand that one of the properties was an agricultural land. Hence, we find that the burden cast upon the assessee to offer an explanation stands fulfilled. Consequently, the burden now shifts to the Revenue to establish the concealment of income or furnishing of inaccurate particulars of income or both. If the Revenue does not agree with the explanation offered by the assessee as in the instant case, then the onus is on the Revenue to prove that there was concealment of particulars of income or furnishing of inaccurate particulars of income. We find this aspect to be completely absent in the instant case. Therefore, we also find the imposition of penalty to be unjustified.

31. The assessee filed an appeal before the Tribunal, which confirmed the order passed by the CIT(A) that the assessee raised a new stand before the CIT(A). No such new stand has been raised. The stand taken by the assessee after receipt of the notice under Section 143(2) of the Act dated 02.9.2014 has been consistent i.e. before the Assessing Officer while submitting the reply to the penalty notice, in the appeal before the CIT(A) and before the Tribunal. This is evident on a reading of the grounds of appeal filed before the CIT(A) as well as

the notes of arguments filed by the assessee before the CIT(A) dated30.6.2017. Therefore, to that extent, the CIT(A) and the Tribunal have committed an error.

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 neverprejudiced 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.

34. The decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan is factually different wherein the assessee was unable to furnish evidence for loans and that he offered the amount of transaction as additional income and this explanation was not acceptable to the Assessing Officer and he applied Explanation (1B) to Section 271(1)(c) of the Act and imposed penalty.

35. In the instant case, the assessee has been able to explain the transaction even at the first instance i.e. while submitting the reply dated 15.3.2016 in response to the notice under Section 143(2) of the Act, which explanation he maintained till he filed an appeal before the Tribunal. Therefore, on facts, the decision of the Hon'ble Supreme Court in the case of K.P.Madhusudhanan is distinguishable.

36. Further, the CIT(A) found fault with the assessee in not challenging the assessment order and for having accepted the same. However, this cannot be a ground to enable the Assessing Officer to automatically levy penalty. In this regard, it is beneficial to refer to the decision of the Hon'ble Division Bench of this Court in the case of CIT Vs. Smt.Anitha Kumaran [reported in (2017) 79 Taxmann.com304] wherein the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products (P) Limited [reported in (2010) 322 ITR 158] was followed wherein the Hon'ble Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression 'concealment of particulars of income and/or furnishing of inaccurate particulars of income' and after applying the decision in the case of Reliance Petro Products (P) Ltd., the Hon'ble Division Bench of this Court dismissed the appeal filed by the Revenue in the following terms :

> *"13.3. The Supreme Court examined the issue threadbare and discussed at length as to what was meant by the expression concealment of particulars of*

income and/or furnishing inaccurate particulars of income and went on to observe as follows:

".....A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income...."

9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:- "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript". We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case,there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends

from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature."

37. On this issue, a useful reference can be to the decision of the Gujarat High Court in the case of National Textiles Vs. CIT [reported in (2001) 249 ITR 125], which related to the assessment year 1974-75 wherein it was held that in order to justify the levy of penalty, two factors must co-exist namely (i) there must be some material or circumstance leading to a reasonable conclusion that the amount does not represent the assessee's income and it is not enough for the purpose of penalty that the amount has been assessed as income and (ii) the circumstances must show that there was animus i.e. conscious concealment or act of furnishing inaccurate particulars on the part of the assessee.

38. Further, the decision of the Hon'ble Division Bench of this Court in the case of CIT Vs. S.I.Paripushpam [reported in (2001) 118 Taxman 844] would support the case of the assessee. In the said case, the Appellate Assistant Commissioner, in the penalty proceedings, held that the amount, the addition of which was agreed to by the assessee was an amount, which had been set out in an enclosure filed along with the return. While testing the correctness of the order, the Tribunal held that the levy of penalty under Section 271(1)(c) of the Act was wholly unwarranted as there had been no fraud or wilful neglect and that the assessee had only, with a view to cooperate with the Department, agreed to the addition. We observe that the above position will help the assessee, as there is not even a remote allegation that there was any fraudulent act by the assessee or the assessee was guilty of wilfully or negligently concealing the income and that his agreement to the addition of the amount, by itself, will not establish fraud or wilful neglect without something more.

39. For the above reasons, the assessee has to succeed on all grounds and consequently, it has to be held that the notice initiating the penalty proceedings is defective and invalid and the other findings rendered by the Assessing Officer, the CIT(A) and the Tribunal do not warrant imposition of penalty on the

assessee.

40. In the result, the above tax case appeal is allowed, the impugned order passed by the Tribunal is set aside and the substantial questions of law are answered in favour of the assessee. No costs.

9. Similar is the decision of Hon'ble Bombay High Court in ***PCIT V/s Goa Coastal Resorts and Recreation (P.) Ltd (272 Taxman 157)*** *which has refused to admit question of law as raised by the revenue by observing as under: -*

5. *We have carefully examined the record as well as duly considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. This being a sine qua non for initiation of penalty proceedings, in the absence of such petition, the two authorities have quite correctly ordered the dropping of penalty proceedings against the petitioner.*

6. *Besides, we note that the Division Bench of this Court in Samson Preinchery (supra) as well as in New Era Sova Mine (supra) has held that the notice which is issued to the assessee must indicate whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded. In both Samson Perinchery and New Era Sova Mine (supra), the notices issued had not struck of the portion which were inapplicable. From this, the Division Bench concluded that there was no proper record of satisfaction or proper application of mind in matter of initiation of penalty proceedings.*

7. *In the present case, as well if the notice dated 30/09/16 (at page 33) is perused, it is apparent that the relevant portions have not been struck off. This coupled with the fact adverted to in paragraph (5) of this order, leaves no ground for interference with the impugned order. The impugned order are quite consistent by the law laid down in the case of Samson Perinchery and New Era Sova Mine(supra) and therefore, warrant no interference.*

8. *The contention based upon MAK Data (P.) Ltd.(supra) also does not appeal to us in the peculiar facts of the present case. The notice in the present case is itself is defective and further, there is no finding or satisfaction recorded in relation to concealment or furnishing of inaccurate particulars.*

9. *For the aforesaid reasons, we hold that no substantial questions of law arises in this appeal. Consequently, this appeal is dismissed.*

The revenue's SLP against this decision has already been dismissed by Hon'ble Supreme Court on 31.08.2021 (130 Taxmann.com 379) by observing as under: -

1. *Delay condoned.*

2. *We are not inclined to interfere with the impugned order.*

3. *The special leave petition is, accordingly, dismissed.*

4. *Pending application stands disposed of.*

*10. Similar is the decision of Hon'ble Bombay High Court rendered in **CIT Vs. Samson Perinchery [2017 88 taxmann.com 413]** wherein Hon'ble Court has confirmed the ratio laid down by Hon'ble Karnataka High Court in **CIT V/s Manjunatha Cotton & Ginning Factory (359 ITR 565).** This decision of Hon'ble Karnataka High Court was subsequently followed by the same court in the case of **CIT V/s SSA's Emerald Meadows (2016 73 Taxmann.com 241)** which was agitated by the revenue before Hon'ble Supreme Court. However, Special Leave Petition, against the same, was dismissed by the Hon'ble Court on 05/08/2016 which reported at 73 Taxmann.com 248. This decision of Hon'ble Karnataka High Court rendered in Manjunatha Cotton & Ginning Factory has subsequently been followed extensively in catena of judicial pronouncements rendered by various Hon'ble High Courts as well as different benches of Tribunal and taken a view that non-framing of specific charge in the show-cause notice would vitiate the penalty proceedings. The failure to frame specific charge against the assessee during penalty proceedings would be fatal to penalty proceedings itself and the same could not be sustained in the eyes of law.*

*11. Recently, the issue of defect in notice has been dealt at length by larger bench of Hon'ble Bombay High Court in **Mohd. Farhan A.Shaikh V/s DCIT (125 taxmann.com 253)** wherein the Hon'ble Court has answered the issue of reference as follows: -*

Answers:

Question No. 1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(1)(c), does amere defect in the notice—not striking off the irrelevant matter—vitiatethe penalty

proceedings?

***181.** It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings, Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.*

***182.** More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee's favour.*

***183.** Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushalya does not lay down the correct proposition of law.*

Question No. 2: Has Kaushalya failed to discuss the aspect of 'prejudice'?

***184.** Indeed, Kaushalya did discuss the aspect of prejudice. As we have already noted, Kaushalya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushalya,*

"fully knew in detail the exact charge of the Revenue against him". For Kaushalya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to
it, "the so-called ambiguous wording in the notice [has not] impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard". It went onto observe that for sustaining the plea of natural justice on the ground of absence of opportunity, "it has to be established that prejudice is caused to the concerned person by the procedure followed". Kaushalya closes the discussion by observing that the notice issuing "is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done".
185 *No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated under section 274. So asserts Kaushalya. In fact, for one assessment year, it set aside the penalty proceedings on the grounds of non-application of mind and prejudice.*
186. *That said, regarding the other assessment year, it reasons that the assessment order, containing the reasons or justification, avoids prejudice to the assessee. That is where, we reckon, the reasoning suffers. Kaushalya's insistence that the previous proceedings supply justification and cure the defect in penalty proceedings has not met our acceptance.*
Question No. 3: What is the effect of the Supreme Court's decision in Dilip N. Shroff on the issue of non-application of mind when the irrelevant portions of the printed notices are not struck off ?
187 *In Dilip N. Shroff, for the Supreme Court, it is of "some significance that in the standard Pro-forma used by the assessing officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done". Then, Dilip N. Shroff, on facts, has felt that the assessing officer himself was not sure whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars.*
188. *We may, in this context, respectfully observe that a contravention of a mandatory condition or requirement for a communication to be valid communication is fatal, with no further proof. That said, even if the notice contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity. Therefore, Dilip N. Shroff disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays non- application of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.*
189. *In Sudhir Kumar Singh, the Supreme Court has encapsulated the principles of prejudice. One of the principles is that "where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, "except in the case of a mandatory provision of law which is conceived not only in individual interest but also in the public interest".*
190. *Here, section 271(1)(c) is one such provision. With calamitous, albeit commercial, consequences, the provision is mandatory and brooks no trifling with or dilution. For a further precedential prop, we may refer to Rajesh Kumar v.*

CIT [(2007) 2 SCC 181], in which the Apex Court has quoted with approval its earlier judgment in State ofOrissav. Dr. Binapani Dei [AIR 1967 SC 1269]. According to it, when by reason of action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice must be followed. In such anevent, although no express provision is laid down on this behalf, compliance with principles of natural justice would be implicit. If a statue contravenes the principles of natural justice, it may also be held ultra vires Article 14 of the Constitution.

191. *As a result, we hold that Dilip N. Shroff treats omnibus show-cause notices as betraying non-application of mind and disapproves of the practice, to be particular, of issuing notices in printed form without deleting or striking off the inapplicable parts of that generic notice.*

12. The revenue has relied on the decision of Hon'ble High Court of Madras in the case of ***Gangotri Textiles Ltd. V/s DCIT (121 Taxmann.com 171)*** *which is distinguishable on facts. In this case, it is the findings that the assessee had understood the notices well and filed replies contesting the levy of penalty. The legal ground assailing defect in notice was raised for the first time before Hon'ble High Court and therefore, Hon'ble Court declined to entertain the same However, the same is not the case here.*

13. Another decision as cited by Ld. Sr. DR is the decision of Hon'ble High Court of Madras in ***Sundaram Finance Ltd. Vs ACIT (93 Taxmann.com 250)*** *against which the assessee's SLP has already been dismissed by Hon'ble Supreme Court which is reported at 99 Taxmann.com 152. We find that this decision has already been distinguished by Hon'ble Court in* ***Babuji Jacob Vs. ITO (supra)*** *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.*

Therefore, the ratio of this decision as cited by Ld. Sr. DR could not be applied in the present case since the issue of validity of notice was well taken up by the assessee during penalty proceedings as well as during appellate proceedings.

14. In the light of aforesaid legal position, since no specific charge was framed either in the show cause notice or in the body of penalty order, and there was failure on the part of Ld. AO to frame specific charge against the assessee,

> *the penalty would not be sustainable in the eyes of law. By deleting the impugned penalty, we allow the appeal. Consequently, going into the merits of the penalty has been rendered academic in nature."*

This decision has considered all the aspects of the matter as well as all the judicial decisions as relied upon by both the sides. This decision also consider the decision of Hon'ble High Court of Madras in **Sundaram Finance Ltd. Vs ACIT (93 Taxmann.com 250)** as cited by Ld. DR. In the decision of this Tribunal in **M/s TVS Supply Chain Solutions vs. ACIT (ITA No.585/Chny/2019 dated 31-08-2021)**, the bench has refused to admit the ground raised by the assessee and no adjudication has been done on the legal grounds raised by the assessee. Therefore, the same could not render any assistance to the case of the revenue.

While adjudicating the legal grounds, the bench has relied on the decision of larger bench of Hon'ble Bombay High Court in **Mohd. Farhan A.Shaikh V/s DCIT (125 taxmann.com 253)** wherein the Hon'ble Court has clearly answered that a mere defect in the notice vitiates the penalty. The primary burden lies on the Revenue. The penalty proceedings translates into action only through notice issued u/s 271(1)(c) read with section 274 of Income Tax Act. The penalty proceedings must stand on its own. Therefore, the assessee must be informed of the grounds of the penalty proceedings. An omnibus notice suffers from the vice of vagueness. Further, penal provisions must be construed strictly and ambiguity, if any, must be resolved in assessee's favour.

10. The Ld. Sr. DR has argued that none of the judicial decisions consider the aspect that Sec.274 does not postulate issuance of any notice to the assessee and only an opportunity of hearing is required to be given to the assessee. However, the same is also not correct. Similar

arguments were made on behalf of the revenue in the cited decision of larger bench of Hon'ble Bombay High Curt which is evident from para 20 & 21 of the decision which read as under: -

> 20. The mandate of law, Ms. Razaq points out, is that no penalty shall be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard. She agrees that the principles of natural justice stand ingrained in the section. According to her, the penalty proceedings have their foundation in the assessment proceedings. In other words, when the stage for imposition of penalty is reached, the assessee already comes to know the charge against him: whether he is being penalised for concealing the particulars of his income or for furnishing inaccurate particulars of the income.
>
> 21. According to Ms. Razaq, the authority concerned applies his mind when he passes the assessment order. So, the form in which the notice is issued for imposing penalty looses its significance. As an example of an 'extreme case', she would submit that if a notice is perfect but it fails to disclose the mind of the assessing authority, the otherwise perfect notice serves no purpose. In this context, Ms. Razaq submits that there is no particular form prescribed for the notice to be issued under section 274 of the IT Act. Only by way of abundant caution, does the Revenue circulate the format. And merely because a particular clause has not been ticked off or struck out, it does not, and should not, result in any prejudice, offending the principles of natural justice. Relying on a plethora precedents, Ms. Razaq submits that unless prejudice or injustice is pointed out, mere technical infraction of law would not vitiate an enquiry or any order or result of any proceedings. And in judging the question of prejudice, according to Ms. Razaq, the Court must act with a broad vision.

In our considered opinion, all the aspects as well as the other conflicting decisions have duly been considered by the Hon'ble Court while rendering the decision and we are bound to follow it.

11. Considering the entirety of facts and circumstances of the case, we would hold that there was failure on the part of Ld. AO to frame specific charge against the assessee and accordingly, the penalty would not be sustainable in the eyes of law. By deleting the impugned penalty, we allow the appeal. Consequently, going into the merits of the penalty has been rendered academic in nature.

12. In the result, the appeal of the assessee is allowed in terms of our above order.

Order pronounced on 19th May, 2023

Sd/-	**Sd/-**
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्याय□यिक सदस्य /JUDICIAL MEMBER	**लेख□सदस्य /ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 19-05-2023
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त/CIT4. विभागीयप्रतिनिधि/DR5. गार्डफाईल/GF