आयकर अपीलीय अधिकरण, **'सी' न्यायपीठ, चेन्नई।**
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री **एस. आर. रघुनाथा,** लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.806/Chny/2023** निर्धारण वर्ष**/Assessment Year: 2002-03**		
Shri S.J.Suryah, No.35-1D, 114, Neelakanta Mehta Street, T. Nagar, Chennai-600 017.	**v.**	The Asst. Commissioner- of Income Tax, Central Circle-2(4), Chennai.
[**PAN: ALYPS 3012 R**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
आयकर अपील सं./**ITA No.594/Chny/2024** निर्धारण वर्ष**/Assessment Year: 2002-03**		
The Asst. Commissioner- of Income Tax, Central Circle-10, Chennai.	**v.**	Shri S.J.Suryah, No.35-1D, 114, Neelakanta Mehta Street, T. Nagar, Chennai-600 017.
		[**PAN: ALYPS 3012 R**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Assessee by	:	Shri B. Ramakrishnan, FCA
Department by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	13.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	29.05.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee & Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-18,

(hereinafter 'the Ld.CIT(A)'), Chennai, dated 30.06.2023 for the Assessment Year (hereinafter 'AY') 2002-03 against the penalty confirmed/deleted u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the Ld.AR of the assessee objecting to the Revenue appeal (ITA No.594/Chny/2024) submitted that the appeal filed by the Revenue is not maintainable, since the amount of penalty disputed in the appeal by the Revenue is only Rs.10,44,496/-. Therefore, according to the Ld.AR, as per the CBDT Circular No.3/2018, the tax effect in Revenue appeal is below Rs.50 lakhs. and so is not maintainable.

3. Per contra, the Ld.DR submitted that even though, tax effect may be less than Rs.50 lakhs, however, since prosecution has been launched by the Department against the assessee, the assessee's case falls in the exemption clause (f) of CBDT Circular as enumerated in letter dated 20.08.2018. Therefore, according to the Ld.DR, the appeal filed by the Revenue is maintainable. In his rejoinder, the Ld.AR fairly admitted that prosecution has been launched against the assessee from/after re-assessment order passed by the AO u/s.153A of the Act (after search) and not from the original assessment on the basis of which the impugned penalty has been levied. Be that as it may, we proceed to hear the appeal of Revenue also.

4. Coming to assessee's appeal, the main grievance of assessee is against the action of the Ld.CIT(A) not appreciating that the penalty imposed by the AO is bad in law, since the notice dated 30.03.2005 issued u/s.271 r.w.s.274 was invalid in law. Drawing our attention to the notice issued by the AO which is placed at Page No.17 of the Paper Book, he submitted that the AO has not struck down the limbs/faults which are not applicable in the facts of the assessee's case for levy of penalty. In other words, according to the assessee, in the facts and circumstances of the case, the AO erred in levy of penalty u/s.271(1)(c) of the Act, without mentioning in the notice u/s.274 r.w.s. 271(1)(c) of the Act, whether the assessee furnished inaccurate particulars of his income or concealed the particulars of his income. In order to buttress his arguments, he has cited the decision of the Hon'ble jurisdictional Madras High Court in the case of Babuji Jacob reported in 430 ITR 259 (Madras), wherein, in an identical case, penalty was levied u/s.271(1)(c) of the Act; and the assessee challenged, *inter alia*, the penalty imposed on the ground that the notice issued by AO u/s.271(1)(c) of the Act, in the printed form without specifically mentioning whether the proposed penalty was initiated for concealment of his particulars of income or on account of furnishing of inaccurate particulars of his income, was bad in law; and the Hon'ble Madras High Court answered the question in favor of assesse and

held that such an omission/failure on the part of AO, to specify the fault in the notice is legally untenable and such notice is defective and invalid. Therefore, Ld AR, urged that since AO had issued the impugned notice for both AY's without striking down the inapplicable portion in the printed notice, the assessee was not aware of which charge/fault the AO proposed penalty u/s 271(1)(c) of the Act, therefore the impugned notices are bad in law and therefore the penalty levied need to be deleted.

5. Per contra, the Ld.DR submitted his written submissions, which is reproduced as under:

> Date of hearing: 13/05/2024
>
> 1. During the course of hearing, the appellant counsel raised the ground that the Penalty initiation notice dated 30.03.05 issued u/s.274 is vague and hence the consequential penalty order dated 31.03.2017 would get vitiated in the absence of precise charge. The counsel for the appellant relied on various case decisions, including that of the jurisdictional high court in support of his ground.
>
> 2. On careful study of all these decisions, it is noticeable uniformly across all these decisions is that nobody had brought to the notice before the Honourable Judicial forum on the use of language by the legislature on the process of initiation of penalty proceeding, the manner in which the proceeding are to be conducted.
>
> In-short, the question that needs to be decided are-
>
> > A. Whether a penalty proceeding u/s.271(1)(c) is initiated u/s.274 of the Act or u/s.271 of the Act?
> >
> > B. When does the initiation of penalty proceeding considered communicated to the assessee.
> >
> > C. Whether there is a legal obligation u/s.271 or u/s 274 of the Act to issue a notice?

D. Even if it is held that a notice need to be served u/s 274, whether such notices can be considered as a 'Statutory notice'? wherein non-striking of non-relevant portions would vitiate the purpose of proper legal communication

A. Whether a penalty proceeding u/s 271(1)(c) is initiated u/s 274 of the Act or u/s 271 of the Act?

1. Sub-section (1) of section 271 is read as follows:

"If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(a)….

(b)….

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income or

(d)….

he may direct that such person shall pay by way of penalty-

…….”

2. As can be seen from the use of language, the legislation has envisaged that..

i. Penalty proceeding u/s 271 has to be initiated only during the pendency of the proceeding and not on completion of the proceeding

ii. Before initiation, satisfaction on attraction of penal provision should be exists.

iii. Penalty can be for both for concealment as well as for furnishing inaccurate particulars

3. In the captioned case, as could be seen from Page No.5 of the assessment order u/s.143(3) dated 30.3.2005, in the last paragraph, before the completion of the assessment, the assessing officer has recorded the satisfaction and reasons for initiation of the penalty proceeding. The same is reproduced as under:

"The assessee has not filed the return of income for the assessment year under consideration voluntarily u/s.139(1) even after issue of notice u/s.148, 142(1) and reminders. Only on 15.9.2004 he has filed the return of income admitting a total income of Rs.40,00,000/- only, after adjusting the estimated expenditure of

Rs.10,00,000/-. Subsequently on verification and information received from other sources it has been established that the assessee has concealed Rs.1,28,38,410/-, Therefore initiation of penalty is necessary in this case.

Penalty u/s 271A, 271B and 271(1)(c) are initiated separately."

4. As evident from the above recording made during the course of assessment proceeding, the entire legal requirement, i. initiation during the pendency of the proceeding ii. Recording of satisfaction and iii. Initiated for concealment of total income has been met. Section 271(1B) clarifies if due recording of reason for initiation of penalty proceeding is mentioned in the body of the Assessment order, and then it would constitute recording of satisfaction under section 271(1) of the Act.

B. When the initiation of penalty proceeding considered does communicated to the assessee

1. The communication of initiation of penalty proceeding in the records of the Assessing Officer has been complete upon service of the Demand notice along with the assessment order.

C. Whether there is a legal obligation u/s 271 or u/s 274 of the Act to issue a notice?

1. 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...."

From the above usage of language, the law has not envisaged initiation of penalty proceedings under section 274 of the Act. Under section 274 of the Act, the law has envisaged only affording the assessee a reasonable opportunity of being heard. Neither section 271 nor section 274 of the Act mandates issuance of any notice.

This language use, when in comparison with Section 142(1), which is reproduced as under:

"For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return... ..... a notice requiring him, a date to be therein specified…

Similarly, the language use in Section 143(2) which is reproduced as under:

"Where a return has been furnished under Section 139, or in response to a notice under sub-section (1) of Section 142, the Assessing Officer 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,

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 of his income.....as if such return were a return required to be furnished under Section 139",

Similarly, the language use in Section 156 which is reproduced as under:

"When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form…..

2. As can be seen from the above illustrations of language use while initiation of various proceedings, the legislation had intentionally has used various languages such as 'may', 'shall", "prescribed form' etc. as the context demands. 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 for concealment or furnishing inaccurate particulars are initiated during the course of assessment and could be concluded even 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.

3. 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 is answered as under:

4. 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.

5. The belief on the need to issue of a notice under the law as a pre-requisite 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.

6. 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. At the most, it can be treated as a communication of date fixed for hearing.

7. 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.

8. 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

Conclusion:

1. 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.

2. 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 where brought before such Judicial forum.

3. 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.

4. 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 or was prevented from duly presenting the appellants' defense on the charge made.

6. The Ld.DR is noted to have opposed the contention of the Ld.AR and inte-alia has submitted that the Hon’ble Madras High Court in the

case of Sundaram Finance Ltd. v. DCIT reported in [2018] 403 ITR 107 (Madras) wherein, the assessee had raised similar grounds (defective notice) was dismissed. Therefore, the Ld.DR wants us to confirm the action of the Ld.CIT(A) and dismiss the appeal filed by the assessee. The Ld.DR also pointed out that the assessee's quantum assessment was challenged by the assessee before the Ld.CIT(A) who was pleased to confirm the additions and later, the Tribunal partly upheld the additions. Thereafter, only the AO had levied penalty of Rs.46,78,788/-. Drawing our attention to the Sec.271(1)(c) of the Act, he submitted that the condition for levying penalty is that the AO or Ld.CIT(A) in the course of proceedings before them need to be satisfied *(i.e. during assessment proceedings or Appellate proceedings should be satisfied*) that assessee has concealed the particulars of his income or furnished inaccurate particulars of such income, then they may direct that such assessee shall pay penalty stated therein u/s.271 of the Act. Here, in this case, according to the Ld.DR, the AO has clearly recorded his satisfaction that the assessee has concealed Rs.1,28,38,410/- while passing the assessment order on 30.03.2005 u/s.143(3) of the Act; and by doing that exercise, according to Ld.DR, he has rightly initiated penalty, inter alia, u/s.271(1)(c) of the Act which is valid, because, sec.274 of the Act, only mandates reasonable opportunity be given to the assessee before

imposing penalty; and therefore, in this case, since enough opportunities were given to assessee, action of AO levying penalty cannot be faulted, for any mistake in notice because in the first place there is no requirement of notice envisaged in sec.274 of the Act. Therefore, he does not want us to interfere with the order of the Ld.CIT(A) confirming penalty levied by the AO. And in respect of the Revenue appeal, against the action of the Ld.CIT(A) deleting the penalty levied by AO on two issues on the ground that the Hon'ble High Court has remitted those issues back to the AO i.e. for re-assessment two issues [(i) issue regarding Rs.34,13,386/- as outstanding payment; & (ii) Rs.30 lakhs added u/s.69 of the Act] he contended that the Ld.CIT(A) ought not to have deleted the penalty on those two issues which has been remanded back to the AO

7. We have heard both the parties and perused the material available on record. The assessee is a cine/cinema director by profession and has not filed his return of income for AY 2002-03 u/s.139 of the Act. Later, on 04.09.2003, a survey u/s.133A of the Act, was conducted in assessee's premise, and pursuant to which, the assessment of the assessee was re-opened by issue of notice u/s.148 of the Act, and was completed on 30.03.2005, wherein, the following additions were made:

Particulars	Amount (in Rs.)
Income admitted as per return dated 15.09.2004	40,00,000
Add: Difference in remuneration received for the movie "Kushi'- Hindi version	1,00,00,000
Add: Remuneration received for the movie 'Kushi' - Telugu version	13,00,000
Add: Unexplained investment	30,00,000
Total	**1,83,00,000**
Less: Office expenses and air ticket	14,61,586
Income assessed	1,68,38,410

8. Aggrieved, against the quantum addition made (supra), the assessee preferred an appeal before the Ld.CIT(A), who upheld the assessment order of the AO by appellate order dated 31.03.2014. Aggrieved, the assessee preferred an appeal before the Tribunal and the Tribunal upheld the addition of Rs.30 lakhs being unexplained investment; and regarding excess remuneration of Rs.1 Cr. which was added by the AO, the Tribunal remitted the same back to AO for considering the revised statement of income filed by assessee before AO on 28.03.2005 at Rs.1,27,27,414/-; and made it clear that assessee is not entitled to the claim of loss of Rs.11 lakhs in respect of "Kushi" Telugu movie. Thereafter, the assessee preferred an appeal before the Hon'ble High Court [against the order of the Tribunal dated 27.02.2016]; and the Hon'ble Madras High Court by order dated 25.01.2021 was pleased to allow two grounds by remitting it back to AO for fresh consideration i.e. ground regarding addition of Rs.30 lakhs added u/s.69 of the Act,

confirmed by the Tribunal and (2) issue regarding Rs.34,13,386/- (claimed to be included by assessee in his revised statement of income). Meanwhile, the AO having passed the assessment order, initiated penalty u/s.271(1)(c) of the Act by issuing notice dated 30.03.2005, thereafter, noticing the Tribunal order passed in year 2016 and after considering assessee's reply dated 15.03.2017, levied penalty on 31.03.2017 u/s.271(1)(c) of the Act, wherein penalty of Rs.46,78,788/- was imposed upon the assessee.

9. Aggrieved by penalty order, the assessee preferred an appeal before the Ld.CIT(A) who taking note of the Hon'ble Madras High Court action/order of setting aside two issues (infra) back to the file of AO for fresh consideration, directed deletion of those penalties levied on these additions i.e. (i) outstanding payment due to the tune of Rs.34,13,386/-, the Ld.CIT(A) deleted the same. (ii) Rs.30 lakhs which was added as unexplained investment u/s.69 of the Act; and the Ld.CIT(A) confirmed penalty on the addition made by the AO regarding Rs.40 lakhs which was shown as remuneration from direction of Hindi version of Kushi and the Ld.CIT(A) also confirmed the penalty on addition of Rs.35 lakhs (income treated as advance) and confirmed the penalty imposed on the additional remuneration received by assessee for the film Kushi of Rs.16,25,028/-; and confirmed the penalty on addition of Rs.13 lakhs (remuneration

received for Telugu version of Kushi) and the Ld.CIT(A) noted that Rs.11 lakhs loss claimed for exploitation of Hindi version of Kushi in Tamil Nadu was disallowed by the AO in the assessment and had been confirmed at the level of the ITAT, he levied the penalty on this issue, [although the AO had not imposed any penalty on it]. Aggrieved by the aforesaid action of the Ld.CIT(A) both the Revenue and assessee are in appeals before us.

10. At the outset, since the assessee has raised legal issue regarding invalid notice issued u/s.271(1)(c) r.w.s.274 of the Act, we will examine/adjudicate the legal issue. For doing that, first of all we have to peruse the show cause notice (SCN) issued by the AO u/s 271(1)(c) r.w.s. 274 of the Act dated 30.03.2005 by which the AO gave notice to the assessee as to why the penalty should not be levied u/s 271(1)(c) of the Act or not ? On perusal of the SCN dated 30.03.2005, we note that both the faults specified in Section 271(1)(c) of the Act are given therein i.e. "*the assessee have concealed the particulars of his income*" or "*furnished inaccurate particulars of such income*". In other words, the AO has put to notice the assessee on both the faults without striking down the inapplicable fault which could have specified which fault AO has found assessee at default i.e. whether he is proposing penalty for the fault of "concealment of particulars of income" or "for furnishing of inaccurate particulars of income". We note that by not striking down one of fault, the

assessee was not in a position to defend properly the charge/fault against which the AO was proposing to levy penalty because both faults are different and distinct. Therefore, the notice was confusing and vague; and infirm for non-application of mind of the AO before issuing notice u/s.274 r.w.s.271(1)(1)(c) of the Act, as well as exposes the whimsical/arbitrary attitude of the AO who has scant regard for Rule of Law and therefore, bad in law; and such notice was held to be invalid and legally untenable; and we note that in such factual background, this Tribunal has consistently held such notices to be bad in law for not specifying the specific fault for which the assessee was being proceeded against for levy of penalty. And this action of the Tribunal has been upheld by several judgments of the various High Courts. We note that the Full bench of the Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh Vs. DCIT (2021) 434 ITR 1 (Bombay) dated 11.03.2021 held that the show cause notice issued prior to levy of penalty without specifying the fault/charge against which the assessee is being proceeded, would vitiate the penalty itself. And thus the Hon'ble High Court upheld the view of the division bench order in the case of PCIT Vs. Goa Dourado Promotions (P.) Ltd. (Tax Appeal No.18 of 2019, dated 26.11.2019) and held that the contrary view taken by another division bench in the case of CIT Vs. Smt.

Kaushalya (1995) 216 ITR 660 (Bom) does not lay down the correct proposition of law.

11. As noted earlier, we find that the penalty notice dated 30.03.2005 did not explicitly convey to the assessee the specific fault/charge the assessee was being proceeded against for levy of penalty. Resultantly, the show cause notice is found to be defective/invalid, and therefore it is held to be bad in law. For doing that we also rely on the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar) and the Department's SLP against it has been dismissed by the Hon'ble Supreme Court. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:-

> "3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act'), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar). 4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed."

12. We also note that the Hon'ble Madras High Court had an occasion to deal with similar question in the case of Babuji Jacob (supra) wherein, the Hon'ble High Court (DB) had framed substantial question of law, inter alia, as under:

> "i. Whether the notice issued under Section 271(1)(c) of the Act dated 30.3.2016 in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is valid and legal ?
>
> ii. Whether the proceedings initiated by the respondent/the Assessing Officer is legal and valid?
>
> iii. Whether the Appellate Tribunal is justified otherwise in rejecting the said technical ground of wrong initiation of the penalty proceedings under Section 271(1)(c) of the Act in misreading the show cause notice dated 30.3.2016 proving perversity in the findings of facts at para 6.5 of the impugned http://www.judis.nic.in order? "

13. The Hon'ble Madras High Court observed regarding defective show cause notice in that case as under:

> 8. A show cause notice was issued to the assessee proposing to initiate proceedings under Section 271(1)(c) of the Act vide notice dated 30.3.2016. A copy of the said notice dated 30.3.2016 has been furnished in the typed set of papers and we find that the said notice does not specifically state as to whether the assessee is guilty of concealing particulars of his income or has furnished inaccurate particulars of income.

14. And the Hon'ble Madras High Court observed further as under:

> 13. The first aspect to be considered is as to whether the notice issued under Section 271(1)(c) of the Act dated 30.3.2016 is legally valid and proper. Admittedly, the notice did not specifically mention as to whether the assessee concealed particulars of his income or furnished inaccurate particulars or both.
>
> 14. Such notices, which did not specify as to which limb of Section 271(1)(c) of the Act would get attracted, were held to be bad in law in the decision of the Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory [reported in (2013) 359 ITR 565], which was followed in the decision of the Karnataka High Court in the case of CIT, Bangalore Vs. SSA Emerald

> Meadows [reported in (2016) 73 Taxmann.com 241] and in the decision of this Court, to which, one of us (TSSJ) was a party, in the case of CIT Vs. Original Kerala Jewellers [TCA.No.717 of 2018 dated 18.12.2018].
>
> 15. Thus, by applying the law laid down in the above decisions, we can safely hold that such notices are bad in law. Consequently, the penalty proceedings initiated are to be held to be wholly invalid.

15. Thereafter, the Hon'ble High Court even noted the decision in the case of Sundaram Finance Ltd., which was cited by the Ld.DR before us and observed in this regard 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.

And thereafter, the Hon'ble Madras High Court held that the notice initiating penalty proceedings was defective and invalid and allowed the appeal of the assessee and answered the question of law in favour of the assessee.

16. In light of the aforesaid decision of the Hon'ble Madras High Court in the case of Babuji Jacob (supra), we direct the deletion of the penalty levied in this case, since the notice issued by the AO is found to be invalid

in the eyes of law. Before parting, we would like to deal with the argument of the Ld.DR that both the faults/limbs are attracted in the facts of this case i.e. the notice was issued for both the faults and it should be read as if assessee had not only concealed the particulars of his income but also inaccurate particulars of such income, such a contention cannot be countenanced for the simple reason that the notice does not say so. It is noted that in the impugned notice the conjunction 'or' has been used between two faults i.e. concealment of his income *or* furbishing of inaccurate particulars which is a disjunctive; if the contention of the Ld.DR has to be accepted, then penalty notice ought to have used the conjunction 'and' in place of 'or' between the two faults which is not discernable from perusal of the impugned notice of penalty. Moreover, we note that while initiating penalty in the quantum assessment order dated 30.03.2005, the AO has stated in the assessment order that the assessee has concealed Rs.1,28,38,410/-, whereas, the notice initiated u/s.271 r.w.s.274 of the Act, proposed penalty under both the faults which exposes the non-application of mind/whimsical attitude of AO which vitiates the contents of the notice; and handicaps the assessee to properly defend the charge proposed against him and therefore, needs to be held as invalid in the eyes of law and respectfully following the judicial

precedents and especially the decision of the Hon'ble Madras High Court in the case of Babuji Jacob (supra), we delete the penalty.

17. And the Ld.DR's contention that no notice was required to be issued against the assessee while initiating penalty cannot be countenanced. Because, the principles of natural justice concerns procedural fairness and ensures a fair decision is reached by an objective decision maker. It should be remembered that by maintaining procedural fairness protects the right of individuals and enhances public confidence in the process.

18. The legal maxims (i) audi alterm partem (the right to be heard) & (ii) memo judex in parte suo (no person shall be a judge in his own cause) are two legal principles which is the core of principles of natural justice.

19. The Hon'ble Supreme Court in the case of M.S.Gill v. The Chief Election Commission reported in [1978] AIR 851 held as under:

> The dichotomy between administrative and quasi-judicial functions vis-à-vis the doctrine of natural justice is presumably obsolescent after A.K. Kraipak v. UoI reported in 1970 SC ISO which marks the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems, and are not any 'new theology. They are manifested in the twin principles of nemo and audi. It has been pointed out that the aim of natural justice is to secure justice, or, to put it negatively to prevent miscarriage of justice.

20. And it is no longer res integra that penalty proceedings and assessment proceedings are distinct; and merely, because addition has

been made in the assessment order does not mean that AO has to levy penalty; and since imposing penalty involves civil consequences *(the expression civil consequences encompasses infraction of property/personal rights/civil liberties/material deprivation/pecuniary and non pecuniary damages*), therefore, notice need to be given because sec.271(1)(c) of the Act specifically says about two distinct faults (i) concealment of the particulars of income (ii) furnishing of inaccurate particulars of such income; and therefore, concept of reasonable opportunity guaranteed u/s.274 of the Act would be illusory if specific charge on which penalty is proposed is not given by AO by way of issuing notice; and as noted above, the principles of natural justice is implied and notice need to be given to assessee before levy of penalty; and therefore, notice issued to assessee has to spell out the specific charge/fault which AO proposes to levy, and should not be vague and should not put the assessee guessing as to what is in the mind of the AO viz whether he proposes concealment of particulars of income or furnishing inaccurate particulars of income. Therefore, the contentions of the Ld.DR cannot be accepted and is held to be devoid of merits and therefore rejected. And since the notices issued by AO itself is invalid & legally untenable, consequent penalty itself is null in eyes of law. Therefore, Revenue

appeal fails and assessee succeeds and the penalty levied is directed to be deleted.

21. In the result, appeal filed by the assessee is allowed and appeal filed by the Revenue is dismissed.

Order pronounced on the 29th day of May, 2024, in Chennai.

Sd/-	**Sd/-**
(एस. आर. रघुनाथा)	**(एबी टी. वर्की)**
(S.R.RAGHUNATHA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 29th May, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF