

आयकर अपीलिय 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 Nos.26 & 27/Chny/2024  
निर्धारण वर्ष/Assessment Years: 2006-07 & 2007-08

Shri Pradeep Dayanand Kothari, Kothari Buildings, 4 <sup>th</sup> Floor, 114, Mahatma Gandhi Road, Chennai-600 034.	v.	The Dy. Commissioner – of Income Tax, Corporate Circle-4(2), Chennai.
[PAN: AEEP K 6866 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Ms. N.V.Lakshmi, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	16.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	05.06.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter 'the Ld.CIT(A)'), Delhi, dated 07.11.2023 for the Assessment Years (hereinafter 'AY') 2006-07 & 2007-08. Both the parties agreed that the issues raised by the assessee are similar/identical and the decision of one appeal will decide the fate of the other. Therefore, appeal filed by the



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assessee for AY 2006-07 taken as lead and the result of which will follow for AY 2007-08.

**2.** At the outset, the Ld.AR of the assessee drew our attention to Ground Nos.2 & 6, which reads as under:

2. The order of the assessing officer erred in invoking the provisions of section 271(1)(c) and imposing penalty without jurisdiction.

6. The CIT(A) failed to appreciate the fact that the AO failed to specify the limb of section 271 (1) (c) of the Act in the show cause notice issued under section 274 r.w.s. 271(1) (c) of the Act. The CIT(A) failed to appreciate that the assessing officer in the show cause notice under section 274 ought to have specifically stated the grounds mentioned in Section 271(1) (c) of the Act i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income.

**3.** On perusal of the aforesaid Ground No.2 reveals that assessee has assailed the action of the Ld. CIT(A) confirming the penalty u/s.271(1)(c) of the Act, which penalty was imposed by AO without having jurisdiction and Ground No.6 is against the action of the Ld. CIT(A) confirming the penalty u/s.271(1)(c) of the Act, without taking into consideration the fact that the notice issued by the AO before imposition of the penalty did not specify the exact fault on which the penalty is proposed to be levied i.e. whether the assessee had furnished inaccurate particulars of income or have concealed the income.

**4.** In respect of the aforesaid ground of appeal, i.e, ground no 6, first of all we have perused the show cause notice (SCN) issued by the AO u/s 271(1)(c) r.w.s. 274 of the Act dated 31.03.2013 for both AY 2006-07 &



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AY 2007-08 by virtue 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 impugned SCN dated 31.03.2013, we note that both the faults specified in Section 271(1)(c) of the Act, are given i.e. "*the assessee have concealed the particulars of his income*" or "*furnishing inaccurate particulars of such income*", meaning 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 unable to defend properly the charge/fault, against which, the AO was proposing to levy penalty. In such factual background, the Tribunal has consistently held such notices to be bad in law for not specifying the specific fault for which the assessee being proceeded against for levy of penalty. And this action of the Tribunal has been upheld by several judgments of the various High Courts including the Hon'ble jurisdictional High Court of Madras in the case of Babuji Jacob v. ITO reported in (2021) 430 ITR 259 (Mad). We also note that the Full bench of the Hon'ble Bombay High Court in the case of Mohd. Farhan A. Shaikh v. DCIT reported in [2021] 434 ITR 1 (Bombay) dated 11.03.2021 held that the show cause notice issued prior to levy of penalty without specifying



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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 an 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.

**5.** As noted earlier, we find that the penalty notice for both AY's dated 31.03.2013 didn't explicitly convey to the assessee the specific fault/charge the assessee is being proceeded 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 v. 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



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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."

**6.** Respectfully following the judicial precedents as well as the binding decision of the Hon'ble jurisdictional High Court in the case of Babuji Jacob (supra), the Full bench of the Hon'ble Bombay High Court's in the case of Mohd. Farhan A. Shaikh (supra), we hold the impugned notices issued for both AYs 2006-07 & 2007-08 to be bad in law and consequently, we direct the deletion of the penalty levied in this case.

**7.** Before parting, as far as the Ld.DR's contention that there is no requirement of notice before imposing penalty, we note that such a contention has been dealt with by this Tribunal in the case of S.J.Suryah in ITA No.806/Chny/2023 dated 29.05.2024 as under:

**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.



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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.

**8.** As far as Ground No.2 is concerned, we note that the AO in the course of assessment proceedings did not made any endorsement of his satisfaction that the assessee has concealed particulars of his income or furnished inaccurate particulars of such income, failure to do so i.e, satisfaction of the AO in the assessment order that assessee had concealed the particulars of income or furnished inaccurate particulars of income was *sine qua non* for initiation of penalty u/s.271(1)(c)/274 of the Act, which is absent in this case, therefore the consequent levy of penalty is bad in law as confirmed by the Hon'ble Supreme Court in the case of



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Pradeep Dayanand Kothari

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PCIT v. Golden Peace Hotel & Resorts reported in [2021] 124 taxmann.com 249 (SC). Assessee succeeds in Ground No.2 also.

9. In the result, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on the 05<sup>th</sup> day of June, 2024, in Chennai.

**Sd/-**

(एस. आर. रघुनाथा)  
**(S.R.RAGHUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)  
**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 05<sup>th</sup> June, 2024.

**TLN, Sr.PS**

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

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