

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

**मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं**  
**मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**1. आयकर अपील सं. ITA No.1370/Chny/2023**  
**(निर्धारणवर्ष / Assessment Year: 2016-17)**

**&**

**2. आयकर अपील सं. ITA No.1371/Chny/2023**  
**(निर्धारणवर्ष / Assessment Year: 2016-17)**

<b>Ampa Palaniappan</b> 48/19, Raman Street, T. Nagar Chennai-600 017.	<b>बनम/</b> Vs.	<b>ACIT</b> Non-Corporate Circle-2(1) Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AIPPP-3546-F</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी/ <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri S. Sridhar (Advocate) -Ld.AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri R. Mukundan (JCIT)-Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	13-06-2024
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	03-07-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. ITA No.1370/Chny/2023 is quantum appeal by assessee for Assessment Year (AY) 2016-17 which has been filed with a huge delay of 1492 days. The Ld. AR, at the outset, pleaded for withdrawal of the appeal which has not been objected to by revenue. Accordingly, this appeal stand dismissed as withdrawn.

2. However, the only grievance of the assessee is confirmation of penalty u/s 271(1)(c) for Rs.48.40 Lacs. The same is subject matter of ITA No.1371/Chny/2023. The Ld. AR, at the outset, urged legal ground No.5 and relied on the recent decision of Tribunal in the case of **Shri Maharani Finance Corporation (ITA Nos.1264/Chny/2023 dated 03-06-2024)**. The Ld. AR placed on record first show-cause notice issued u/s 274 r.w.s. 271(1)(c) to submit that no specific charge has been framed against the assessee and therefore, penalty could not be sustained. The Ld. Sr. DR justified the penalty. Having heard rival submissions, our adjudication would be as under.

### **Proceedings before lower authorities**

3.1 In the assessment order, Ld. AO made interest disallowance and also brought to tax difference in receipts. For the same, penalty was initiated in the assessment order as under: -

*Penalty u/s 271(1)(c) is initiated separately.*

3.2 During the course of penalty proceedings, a show cause notice was issued to the assessee u/s 274 read with Section 271(1)(c) on 27-12-2018 as under: -

*Whereas in the course of proceedings before me for the Assessment Year 2016-17, it appears to me that you have concealed particulars of income or furnished inaccurate particulars of such income.*

3.3 Since the assessee's quantum appeal was dismissed, Ld. AO levied penalty of Rs.48.40 Lacs vide order dated 05-02-2022 on the allegation of concealment of income. During appeal proceedings, the assessee, inter-alia, relied on the decision of Hon'ble Supreme Court in the case of **Reliance Petroproducts Pvt. Ltd. (322 ITR 158)**. However, in the absence of any satisfactory reply forthcoming from the assessee,

Ld. CIT(A) confirmed the penalty against which the assessee is in further appeal before us.

### **Our findings and Adjudication**

4. It is quite apparent that though impugned penalty has been initiated in the assessment order, however, no specific charge has been framed in the show-cause notice. In such a case, impugned penalty could not be sustained in law as held by co-ordinate bench in the cited case law of **Shri Maharani Finance Corporation (supra)**. On identical facts, the bench held as under: -

6. We are of the considered opinion that the two limbs viz. 'furnishing of inaccurate particulars of income' and 'concealment of income' are separate and distinct charges. It is quite clear that though impugned penalty has been initiated in the assessment order, however, in the notice dated 22-03-2022, the specific charge was not mentioned as is evident from extraction made by us in preceding para-3. Even in subsequent notice dated 13-09-2022, in para-3, Ld. AO had made allegation of under-reporting of income which is altogether a different charge and used in the context of Sec.270A. After perusal of these notices, it could be concluded 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.

7. 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 was proposed. The notice does not press specific charge against the assessee and 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. Our view is duly

supported by the cited decision of Tribunal in **Shri D. Senthil Kumar vs. ACIT (supra)**. In this decision, co-ordinate bench relied on another decision of Tribunal in **M/s PVP Ventures Ltd. vs. DCIT (ITA No.778/Chny/2019)** which in turn, drew strength from the decision of larger bench of Hon'ble Bombay High Court in the case of **Mohd. Farhan A. Shhaikh (125 Taxmann.com 253)** as well as the decision of Hon'ble High Court of Madras in **Babuji Jacob Vs. ITO (430 ITR 259; 08.12.2020)** to take the same view. The Hon'ble High Court of Madras in the case of **Babuji Jacob Vs. ITO (supra)**, considering various decisions holding the field, 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 Ld. Sr. DR has referred to a decision of Hon'ble High Court of Madras in the case of **Amtex Software Solutions Pvt. Ltd. (W.P.No.16140 of 2019 dated 12.06.2019)**. In the litigation, the assessee filed writ petition assailing show-cause notice issued by Ld. AO u/s 274 r.w.s. 271 proposing penalty against the assessee. The assessee assailed the notice on the ground that specific charge was not framed against the assessee. The Hon'ble Court, in para 16 & 17 of the order, concurred with assessee's submissions that the distinction between the two expressions viz. 'concealed particulars of income' and 'furnished inaccurate particulars of income' was beyond any pale of doubt. There could not be two opinions or disputes about the fact the aforesaid two expressions are distinct and that they fall under different realms. The Hon'ble Court finally directed revenue to keep the show-cause notice in abeyance and issue a corrigendum / addendum / errata to the assessee clearly stating the grounds on which the notice was issued. In the present case, that stage is already over since the assessee is in second appeal before us. Therefore, in our considered opinion, this case, in fact, supports the case of the assessee that non-framing of specific charges would be fatal to penalty proceedings.

8. 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.

Facts being identical, respectfully following the above decision, we would hold that in the absence of specific charge in the show-cause notice, the impugned penalty is not sustainable in law. Consequently, going into the merits of the penalty has been rendered academic in nature.

5. ITA No.1370/Chny/2023 stand dismissed as withdrawn. ITA No.1371/Chny/2023 stands allowed in terms of our above order.

*Order pronounced on 3<sup>rd</sup> July, 2024*

**Sd/-**  
**(MANU KUMAR GIRI)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 03-07-2024  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai .
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF