

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.748/Chny/2024
निर्धारण वर्ष/Assessment Year: 2002-03

Shri A.PL.Nagappa Chettiar, Plot No.353, Anna Nagar, Madurai-625 020.	v.	The ACIT, Circle-3, Trichy.
[PAN: ACTPN 4894 Q]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri T. Vasudevan, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Shri D. Hema Bhupal, JCIT
सुनवाईकीतारीख/Date of Hearing	:	19.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter 'the Ld.CIT(A)'), Delhi, dated 27.01.2024 for the Assessment Year (hereinafter 'AY') 2002-03.

2. At the outset, the Ld.AR of the assessee raised a legal issue that the penalty levied u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter in short 'the Act') is not sustainable, since the notice issued by the AO before imposing of penalty was invalid, because, it didn't specify the exact



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fault on which the penalty is proposed to be levied and drew our attention to show cause notice issued by the AO u/s.271(1)(c) r.w.s.274 of the Act dated 28.12.2004 for AY 2002-03.

3. On perusal of the aforesaid legal issue 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 according to assessee without having jurisdiction. According to assessee, the Ld.CIT(A) while passing the impugned order has not considered the fact that the notice issued by the AO before imposition of the penalty didn't 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 legal issue, 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 28.12.2004 for AY 2002-03 by virtue of 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 28.12.2004, we note that the fault specified in Section 271(1)(c) of the Act, is 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 the fault without striking down



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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 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.



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5. As noted earlier, we find that the penalty notice dated 28.12.2004 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 v. 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."

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



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Shri A.PL.Nagappa Chettiar

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issued for AY 2002-03 to be bad in law and consequently, direct the deletion of the penalty levied in this case.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 10th day of July, 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: 10th July, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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