

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.794/Chny/2024
निर्धारण वर्ष/Assessment Year: 2014-15

M/s.Sri Jeyaprabha Jewellers – Pvt. Ltd., 285/91 B, South Avani Moola Street, Madurai-625 001.	v.	The DCIT, Corporate Circle-2, Madurai.
[PAN: AARCS 2844 Q]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri D.Hema Bhupal, JCIT
सुनवाईकीतारीख/Date of Hearing	:	28.06.2024
घोषणाकीतारीख /Date of Pronouncement	:	26.07.2024

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), (hereinafter in short 'the Ld.CIT(A)'), Chennai-19, dated 31.01.2024, for the Assessment Year (hereinafter in short 'AY') 2014-15.

2. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the penalty. According to the Ld.AR, the assessee has raised a legal issue that the notice issued by the AO before levy of penalty dated 31.12.2016 u/s.274 r.w.s.271(1)(c) of the Income Tax Act,



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1961 (hereinafter in short 'the Act') was defective/invalid in law and therefore, the penalty is bad in law. Drawing our attention to the notice issued by the AO, 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 imposing penalty u/s.271(1)(c) of the Act, without specifically 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 case-law/decision of the Hon'ble jurisdictional Madras High Court in the case of Babuji Jacob reported in 430 ITR 259 (Madras), wherein, in on an identical case, penalty was levied u/s.271(1)(c) of the Act; and the assessee challenged the imposition of penalty, *inter alia*, 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 particulars of income* or on account of *furnishing of inaccurate particulars of income*, was bad in law; and the Hon'ble Madras High Court answered the question in favor of assessee 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



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notice for AY without striking down the inapplicable portion in the printed notice, the same was vague, and assessee was not aware of which charge/fault, the AO had in mind, to levy penalty u/s 271(1)(c) of the Act, therefore the impugned notice is bad in law and therefore the penalty levied needs to be deleted.

3. Per contra, the Ld.DR supported the action of the Ld.CIT(A) and cited the decision of 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, he doesn't want us to interfere with the order of the Ld.CIT(A).

4. We have heard both the parties and perused the material available on record. 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 31.12.2016 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 31.12.2016, 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*



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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 in mind that assessee has committed 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 in eyes of law, 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



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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.

5. As noted earlier, we find that the penalty notice dated 31.12.2016 didn't 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 &



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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. And as noted, 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? "

7. The Hon'ble Madras High Court's observation 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.

8. 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



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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.

9. 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.

10. In the light of the discussion (supra) we find that the notice issued u/s.274 r.w.s 271(1)(c) by the AO dated 31.12.2016 was infirm/invalid in the eyes of law. Therefore, in light of the aforesaid decision of the Hon'ble



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Madras High Court in the case of Babuji Jacob (supra), and other case laws discussed, we direct the deletion of the penalty levied in this case. And since the penalty notice issued by AO itself are invalid & legally untenable, consequent penalty levied for concealment of particulars of income are null in eyes of law. Therefore, assessee succeeds and the penalty levied is directed to be deleted.

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

Order pronounced on the 26th 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: 26th July, 2024.

TLN, Sr.PS

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF