

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1130/Chny/2023
निर्धारण वर्ष/Assessment Year: 2013-14

Shri Poosappan Arulsundaram, 11, Poondurai Road, Ragupathinaickenpalayam, Erode-638 002.	v.	ACIT, Circle-1, Erode.
[PAN: ACGPA 7995 N]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri G. Tarun, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	27.06.2024
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)-20, (hereinafter in short "theLd.CIT(A)"), Chennai, dated 08.08.2023 for the Assessment Year (hereinafter in short "AY") 2013-14 confirming the penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter in short "the Act").



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2. At the outset, the Ld.AR of the assessee has raised the legal issue that the notice issued by the AO dated 28.03.2016 was invalid. The Ld.AR drew our attention to the impugned notice dated 28.03.2016 issued u/s.274 r.w.s.271 of the Act, and pointed out that the AO in the ibid notice had stricken off "*concealed the particulars of your income*" which means, assessee was put to notice for committing the fault "*furnishing of inaccurate particulars of such income*". However, he brought to our notice that the AO levied penalty [by order dated 27.09.2016] for "*concealed the particulars of his income*" and also for "*furnishing inaccurate particulars of income*" which means that the AO has found the assessee for committing both the faults, after having given notice for only one fault i.e. "*furnishing of inaccurate particulars of such income*". Thus, according to the Ld.AR, the AO didn't call upon the assessee to defend the distinct fault "*concealment of particulars of income*" which makes the impugned notice bad in law as held by the Hon'ble jurisdictional High Court of Madras in the case of Babuji Jacob v. ITO reported in (2021) 430 ITR 259 (Mad). We find force in the submissions of the Ld.AR and 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 invalid notices vitiates the penalty levied by the AO. In the present case also we note that notice issued by AO was defective, and therefore, the assessee was handicapped from defending



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properly the charge/fault and resultantly, the defect in the notice, goes to the root of the penalty levied by the AO, and hence, we direct deletion of the penalty.

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

Order pronounced on the 26th day of July, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
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. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF