

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.1112/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2013-14

Smt.Arulsundaram Nithya, 11, Poondurai Road, Ragupathinaickenpalayam, Erode-638 002.	v.	The ACIT, Circle-1, Erode.
[PAN: ABSPN 5094 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	:	09.08.2024

**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 "the Ld.CIT(A)"), Chennai, dated 08.08.2023 for the Assessment Year (hereinafter in short "AY") 2013-14 confirming penalty levied 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 raised a legal issue that the notice issued by the AO before levying of penalty dated 28.03.2016 u/s.274 r.w.s.271 of the Act was invalid, wherein, he has put the assessee on notice for both the faults given in sec.271(1)(c) of the Act i.e. i) "concealed the particulars of his income" or ii) "furnishing of inaccurate particulars of such income". According to the Ld.AR, both the faults are distinct as held in plethora of decisions by the Hon'ble Constitutional Courts; concealment of particulars of income is distinct fault; likewise, "furnishing of inaccurate particulars of income" is a distinct fault. And the Ld.AR drew our attention to sec.271(1)(c) of the Act, which is extracted below:

s.271(1).....

(a) .....

(b) .....

(c) has concealed the particulars of his income or <sup>2</sup>[\*\*\*] furnished inaccurate particulars of such income,

**3.** According to the Ld.AR, the word "or" has been used by the Parliament which is disjunctive and therefore, the AO couldn't have used the word "and" which is a coordinate conjunction, which is used to connect two words, phrases, clauses, etc., According to the Ld.AR, the AO cannot make a new law and join both the faults together and allege that assessee to have "concealed the particulars of his income" and having furnished "inaccurate particulars of such income". Such an impugned



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action of the AO, according to the Ld.AR, tantamounts to arbitrary exercise of power and against the principles of "Rule of Law"; and the AO couldn't have put the assessee on a charge which is not in the statute, which is vague & confusing and assessee was not able to defend properly the charge which doesn't have sanction of Parliament. We find that in respect of the aforesaid submissions of the Ld.AR, we perused the contents of notice dated 28.03.2016 u/s.274 r.w.s.271 of the Act which has put the assessee on notice for "having concealed the particulars of her income" and "for furnishing inaccurate particulars of such income". Thus, we note that both the faults as prescribed u/s.271(1)(c) of the Act, has been clubbed together and the AO has asked the assessee to defend herself from the penalty proposed to be levied against her. We find from perusal of s.271(1)(c) of the Act (supra), the Parliament has used the word "or" between two faults i.e. i) to have "concealed the particulars of his income" or ii) "furnished inaccurate particulars of such income". The AO has in place of "or" has used "and" joined both the offences and put the assessee on notice for both the faults. In this regard, it is noted that penalty notice u/s274 of the Act must specifically state the grounds mentioned in sec.271(1)(c) i.e. whether it is for concealment of income or furnishing inaccurate particulars of income. The faults stated supra are distinct and by clubbing/joining the same, the assessee has alleged that she couldn't defend properly the charge; and the action of the AO was



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arbitrary who made a new charge which is not there in the statute. Therefore, the AO's action is whimsical and arbitrary and against the principle of Rule of law. Since the assessee was put to notice on a hybrid offence which is not in the statute (by joining both the faults as stated in sec.271(1)(c) of the Act), the impugned notice is infirm and consequently vitiates the penalty, which decision to be deleted for that we rely on the ratio of the decision of the Hon'ble jurisdictional High Court of Madras in the case of Babuji Jacob v. ITO reported in (2021) 430 ITR 259 (Mad) and also the decision of 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).

**4.** In the light of the aforesaid discussion, since assessee was handicapped from defending herself due to the defect in the notice which goes to the root of the penalty levied by the AO, we direct the deletion of the penalty.

**5.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 09<sup>th</sup> day of August, 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**



ITA No.1112/Chny/2023 (AY 2013-14)  
Smt.Arulsundaram Nithya

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चेन्नई/Chennai,  
दिनांक/Dated: 09<sup>th</sup> August, 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