

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.2107 & 2108/Chny/2025
निर्धारण वर्ष/Assessment Years: 2010-11 & 2011-12
&
Stay Petition Nos.76 & 77/Chny/2025
निर्धारण वर्ष/Assessment Years: 2010-11 & 2011-12

Mr. Arumugasamy Vasantha Vikas, 43-A, Kaliamman Kovil Street, Sivakasi, Virudhunagar-626 123.	v.	The ITO, Corporate Ward-4, Madurai-625 002.
[PAN:ADGPV 6980 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.B. Rama Krishnan, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.Saujanya Ranjan, IRS
सुनवाईकीतारीख/Date of Hearing	:	23.09.2025
घोषणाकीतारीख /Date of Pronouncement	:	08.10.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter referred to as "the Ld.CIT(A)"), Chennai-18, both dated 04.07.2025 for the Assessment Year (hereinafter referred to as "AY") 2010-11 & 2011-12 against the confirmation of penalty levied by the AO u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Both the



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parties agreed that the issues raised by the assessee are similar/identical and the decision of one appeal will decide the fate of the other. Therefore, appeal filed by the assessee for AY 2010-11 taken as lead case and the result of which will follow for AY 2011-12. SP Nos.76 & 77/Chny/2025 are the Stay Petitions filed by the assessee for AYs 2010-11 & 2011-12.

2. At the outset, the Ld.AR of the assessee drew our attention to Ground No.3 for both the assessment years which are similarly worded and the same is read as under:

3. For that the Learned Commissioner of Income Tax (Appeals) indirectly failed to consider the fact that the initial penalty notice u/s.274 r.w.s 271(1)(c) of the Act dated 03.06.2016 is defective since the Assessing Officer has failed to delete the inappropriate words in the notice relating to whether the notice is issued for concealment of income or for furnishing inaccurate particulars of income.

3. By raising the aforesaid Ground No.3, the assessee has assailed the action of the Ld.CIT(A) confirming the penalty u/s.271(1)(c) of the Act without appreciating the fact that the notice issued by the AO u/s.274 r.w.s.271(1)(c) of the Act [*before imposing penalty*] didn't specify the exact fault on which the penalty is proposed to be levied i.e. whether the assessee has furnished the inaccurate particulars of income or have concealed the income, which omission according to assessee vitiates the penalty imposed on assessee and therefore, Ld CIT(A) erred in not cancelling the penalty imposed by the AO.



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4. In view of the aforesaid grounds of appeal, first we examined the impugned show cause notice (SCN) issued by the AO u/s.271(1)(c) r.w.s.274 of the Act dated 03.06.2016 for both the AYs 2010-11 & 2011-12, by virtue of it, 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 03.06.2016, 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 "*furnishing inaccurate particulars of such income*", i.e. without striking down the fault which is inapplicable in the facts of the present case. In other words, while proposing levy of penalty, the AO has put to notice the assessee on both the faults without removing the inapplicable charge. Due to the omission, on the part of the AO, not striking down one of fault specified in the impugned notice, the assessee pleads his inability to properly defend the charge/fault, against which, the AO was proposing to levy penalty. In such factual background, the Tribunal is noted to have 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 such 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



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(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.

5. As noted earlier, we find that the penalty notice for both AY's dated 03.06.2016 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 Vs. SSA's Emerald Meadows, reported in (2016) 73



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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 issued for both AYs 2010-11 & 2011-12 to be bad in law and consequently, we direct the deletion of the penalty levied in this case.

7. Before parting, as far as the Ld.DR's contention that there is no requirement of notice before imposing penalty, we note that such a contention has been dealt with by this Tribunal in the case of S.J.Suryah in ITA No.806/Chny/2023 dated 29.05.2024 wherein the same was repelled by observing as under:

17. And the Ld.DR's contention that no notice was required to be issued against the assessee while initiating penalty cannot be countenanced. Because,



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the principles of natural justice concerns procedural fairness and ensures a fair decision is reached by an objective decision maker. It should be remembered that by maintaining procedural fairness protects the right of individuals and enhances public confidence in the process.

18. The legal maxims (i) audi alteram partem (the right to be heard) & (ii) memo judex in parte suo (no person shall be a judge in his own cause) are two legal principles which is the core of principles of natural justice.

19. The Hon'ble Supreme Court in the case of M.S.Gill v. The Chief Election Commission reported in [1978] AIR 851 held as under:

The dichotomy between administrative and quasi-judicial functions vis-à-vis the doctrine of natural justice is presumably obsolescent after A.K. Kraipak v. UoI reported in 1970 SC ISO which marks the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems, and are not any 'new theology'. They are manifested in the twin principles of nemo and audi. It has been pointed out that the aim of natural justice is to secure justice, or, to put it negatively to prevent miscarriage of justice.

20. And it is no longer res integra that penalty proceedings and assessment proceedings are distinct; and merely, because addition has been made in the assessment order does not mean that AO has to levy penalty; and since imposing penalty involves civil consequences (*the expression civil consequences encompasses infraction of property/personal rights/civil liberties/material deprivation/pecuniary and non pecuniary damages*), therefore, notice need to be given because sec.271(1)(c) of the Act specifically says about two distinct faults (i) concealment of the particulars of income (ii) furnishing of inaccurate particulars of such income; and therefore, concept of reasonable opportunity guaranteed u/s.274 of the Act would be illusory if specific charge on which penalty is proposed is not given by AO by way of issuing notice; and as noted above, the principles of natural justice is implied and notice need to be given to assessee before levy of penalty; and therefore, notice issued to assessee has to spell out the specific charge/fault which AO proposes to levy, and should not be vague and should not put the assessee guessing as to what is in the mind of the AO viz whether he proposes concealment of particulars of income or furnishing inaccurate particulars of income. Therefore, the contentions of the Ld.DR cannot be accepted and is held to be devoid of merits and therefore rejected. And since the notices issued by AO itself is invalid & legally untenable, consequent penalty itself is null in eyes of law. Therefore, Revenue appeal fails and assessee succeeds and the penalty levied is directed to be deleted.

8. In the light of the discussion, since the assessee succeeds on the legal issue, we are not inclined to examine the merits of the penalty levied by the AO. And since we have disposed of penalty appeals



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preferred by the assessee, the Stay Petitions filed by the assessee has become infructuous and so, dismissed.

9. In the result, appeals filed by the assessee are allowed and Stay Petitions filed by the assessee are dismissed being infructuous.

Order pronounced on the 08th day of October, 2025, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 08th October, 2025.

TLN

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