

**आयकर अपीलीय अधिकरण, “ए” न्यायपीठ, चेन्नई**  
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘A’ BENCH, CHENNAI  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
Before Shri Duvvuru RL Reddy, Judicial Member &  
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A.No.779/Chny/2019  
निर्धारण वर्ष/**Assessment Year:2013-14**

Smt. M. Malarvizhi,  
18, Mettu Theru,  
Kumananchavadi,  
Chennai 600 056.

The Income Tax Officer,  
Vs. Non Corporate Ward 8(5),  
Chennai 600 034.

**[PAN:APJPM2455H]**

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Pranay J. Shah, C.A  
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT  
सुनवाई की तारीख/ Date of hearing : 04.07.2019  
घोषणा की तारीख /Date of Pronouncement : 19.07.2019

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 9, Chennai dated 30.01.2019 relevant to the assessment year 2013-14. The grounds raised by the assessee in the grounds of appeal are reproduced as under:

- “1. For that the order of the Learned Commissioner of Income Tax (Appeals) - 9, Chennai u/s.271(1)(c) of the Income Tax Act, 1961 is opposed to law, facts and circumstances of the case.
2. For that the Learned Commissioner of Income Tax (Appeals) erred in passing the order dismissing the appeal filed by the Appellant herein without noting that the notice issued by the

*Assessing Officer under section 274 read with section 271(1)(c) is bad in law, as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income.*

3. *For that the Learned Commissioner of Income Tax (Appeals) committed a grave error in dismissing the Appeal of the Appellant relying on the judgement of the Hon'ble Madras High Court in M/s. Sundaram Finance Ltd V. ACIT especially when the said case is not applicable to case of the Appellant.*
4. *For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is prayed that the Hon'ble Tribunal may be pleased to cancel the assessment and/or to delete the addition made in the assessment order and pass such other orders as the Hon'ble Tribunal may deem fit."*

2. Brief facts of the case are that The assessee, Smt. M. Malarvizhi, assessed in this ward has not filed return of income for the assessment year 2013-14. As per the information available with the Department, the assessee sold immovable properties for a consideration of ₹. 5,91,57,000/- and the guideline value for the property sold was ₹. 6,51,76,500/-. As per section 50C of the Act, this value of ₹.6,51,76,500/- has to be taken as sale consideration for the computation of capital gain. Since, the assessee has not filed any return of income admitting any capital gain on the sale of the above property, the assessment for the assessment year 2013-14 was re-opened by way of issuing notice under section 148 on 08.01.2016. In response to this notice, the assessee has filed her return of income on 29.01.2016 admitting only ₹.2,15,130/- as interest income and claimed an amount of ₹.25,420/- as refund.

2.1 During the course of scrutiny proceedings, when the assessee was asked to explain why the capital gain on the sale of property and other income was not admitted fully, then the assessee has admitted additional interest income of ₹.4,09,025/-; House property income of ₹. 8,400/- and Long term capital gain of ₹.1,86,40,192/-. The assessment was completed on 31.12.2016 determining the income at ₹.1,91,62,741/- and a demand of ₹. 68,03,570/- was raised. Accordingly demand notice under section 156 penalty show cause notice under section 274 r.w.s.271 of the Act were issued and served upon the assessee. But even after the lapse of six months, the assessee has neither paid the tax fully nor filed any appeal before the Id. CIT (appeals).

2.2 During the course of penalty proceedings, the AR of the assessee requested to drop the penalty proceedings. However, the AR of the assessee has not given any valid explanation for not filing the return in time and for not admitting correct income even after receipt of notice issued under section 148 of the Act. The assessee has not filed any return of income originally admitting the interest income, house property income and huge long term capital gain and even after receiving notice under section 148 of the Act, the assessee has filed her return of income admitting only ₹. 2,15,130/- as income as against income admitted during the course of assessment proceedings of ₹.1,92,62,150/-. In view of the above and since

the assessee has concealed the particulars of income as well as filed inaccurate particulars of income, the Assessing Officer levied penalty under section 271(1)(c) of the Act.

3. On appeal, by way of additional ground, the assessee challenged the validity of initiation of penalty stating that the notice issued does not specify whether the notice is for concealment of income or for furnishing of inaccurate particulars of income and that consequently the notice was invalid. Since the additional ground raised is a legal issue questioning the jurisdiction of penalty initiated, the Id. CIT(A) admitted the additional ground for adjudication on merit. After considering the submissions and verification of the notice issued to the assessee, the Id. CIT(A) held that no prejudice can be said to have been, prima facie, caused to the assessee through the issue of the impugned penalty notice and accordingly, the additional ground raised by the assessee was dismissed.

4. On being aggrieved, the assessee is in appeal before the Tribunal.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee has not challenged the penalty levied under section 271(1)(c) of the Act. Whereas, the assessee has challenged the issue of notice under section 274 r.w.s. 271(1)(c) of the Act is bad in law, as it did not specify

under 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 inaccurate particulars of income. Before the Id. CIT(A), by way of additional ground, the assessee challenged the validity of initiation of penalty stating that the notice issued does not specify whether the notice is for concealment of income or for furnishing of inaccurate particulars of income and that consequently the notice was invalid. On perusal of the notice issued under section 274 r.w.s. 271(1)(c) of the Act, the Id. CIT(A) has observed that notice has been issued for concealment and for furnishing inaccurate particulars of income. The Id. CIT(A) further observed that the penalty has been levied for both concealment of particulars of income as well as furnishing of inaccurate particulars of income by the assessee. Accordingly, the additional ground raised by the assessee was dismissed.

5.1 We have perused the notice issued under section 274 r.w.s. 271 of the Act dated 31.12.2016 and find that the Assessing Officer has very well specified by striking off point No. 1 and 2 in the above notice issued to the assessee that the penalty proceedings initiated as per point No. 3, wherein, it was mentioned that

“3. \*have concealed the particulars of your income and furnished inaccurate particulars of such income.”

Thus, we find no ambiguity in the notice served on the assessee for initiating penalty proceedings clearly indicating that the said penalty proceedings are

initiated towards concealment of particulars of income and furnished inaccurate particulars of such income. Moreover, it is amply clear and reflected in the orders of authorities below that the assessee has concealed the particulars of income as well as furnished inaccurate particulars of such income.

5.2 In this case, the admitted facts are that the assessee has not filed any return of income voluntarily and even after receipt of notice issued under section 148 of the Act, the assessee has admitted only ₹. 2,15,130/- as against the income admitted during the course of assessment proceedings of ₹. 1,91,62,750/- after showing the evidences of selling the properties by assessee during the financial year relevant to the assessment year 2013-14. From the above it is clear that the assessee, in spite of having huge income by way of house property income, interest income and capital gain, has not come forward and declared the correct income. Even after receipt of notice issued under section 148 of the Act, the assessee has concealed the interest income of ₹.4,09,025/-, house property income of ₹. 8,400/-, and long term capital gain of ₹.1,86,40,192/- and has filed inaccurate particulars in the return of income filed in response to the notice issued under section 148 of the Act stating that she had earned only ₹. 2,15,130/-. In view of the above facts, since levy of penalty is warranted under both counts i.e., concealment of particulars of income as well as furnishing of inaccurate

particulars of income, the Assessing Officer rightly and specifically mentioned in the notice by striking off other two points which were not relevant in this case. It is not the case of the assessee that the Department issued notice of printed form where all the grounds mentioned in section 271 of the Act as that of the notice issued in the case of M/s. Original Kerala Jewellers, which was relied on by the assessee. In view of these facts, penalty levied under which limb of section 271(1)(c) of the Act does not arise in this case, because, penalty is warranted under both limb and as such, the Assessing Officer rightly levied penalty under section 271(1)(c) of the Act. Under these facts and circumstances, the ground raised by the assessee stands dismissed.

6. The next issue raised in ground No. 3 is that the Id. CIT(A) has committed a grave error in dismissing the appeal of the assessee relying on the judgement of the Hon'ble Madras High Court in the case of M/s. Sundaram Finance Ltd. v. ACIT especially when the said case is not applicable to case of the assessee. We have also gone through the above judgement and find that the case law squarely applies to the facts of the assessee's case. Admittedly, in this case, the assessee has not raised the issue before the Assessing Officer during the course of penalty proceedings except pleading for dropping the levy of penalty. More particularly, having concealed the particulars of income and furnishing of inaccurate particulars

of such income, the assessee clearly understood the purport and import of notice issued under section 274 r.w.s. 271 of the Act,. Thus, the Id. CIT(A) has rightly followed the above decision of the Hon'ble High Court. We find no reason to interfere with the order passed by the Id. CIT(A). thus, the ground raised by the assessee stands dismissed.

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

Order pronounced on the 19<sup>th</sup> July, 2019 at Chennai.

Sd/-  
(S. JAYARAMAN)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 19.07.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.