

No concealment penalty u/s 271(1)(c) on mere disallowance of a claim if full details were disclosed in return

Summary – The Mumbai HC in a recent case of Administrator of the Estate of Late Mr. E.F. Dinshaw, (the Assessee) held that Penalty for concealment of income cannot be levied for a claim being rejected by the revenue authorities during assessment where full details were disclosed in the tax return.

Facts

- In this appeal that was filed by the Revenue authorities before the Mumbai HC, for the assessment year 2003-04, the following question of law was proposed for the consideration of the HC.

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that penalty under Section 271(1)(c) of the Act is not leviable when parameters laid in Explanation 1(B) of Section 271(1)(c) stands satisfied?"

- The respondent - assessee had purchased units on 21st March 2002, received dividend on 22nd March 2002 and sold the units on 16th April 2002 at a loss of Rs.1.6 crores. The dividend income was exempt under Section 10(33) of the Income Tax Act, 1961 ('Act' for short). The respondent - assessee did not adjust the dividend income against short-term capital gain in view of Section 94(7) of the Act. However, during the assessment proceedings the respondent - assessee raised a claim that Section 94(7) of the Act would not apply as the units were not sold but were redeemed. The authorities did not accept the contention of the respondent - assessee and held that redemption of units would also mean transfer within the meaning of Section 2(47) of the Act. The respondent - assessee accepted the aforesaid position. However, the assessing officer levied penalty under Section 271(1)(c) of the Act. In appeal, the Commissioner of Income Tax (A) upheld the penalty.
- On further appeal, the Tribunal held that the respondent-assessee having made complete disclosure in the return of income, the fact that during the assessment proceedings a claim was made by the respondent - assessee to the effect that Section 94(7) would not be applicable in their case, cannot be a ground for imposing penalty.
- The Tribunal relied upon the decision of the Supreme Court in the matter of *CIT v. Reliance Petroproducts (P.) Ltd.* [\[2010\] 322 ITR 158/189 Taxman 322](#), wherein it has been held that levy of penalty is not justified merely because a claim made by the assessee has been rejected.
- The Tribunal also records a finding of fact that all details of loss claimed has been stated in the return of income and making a bona fide claim to be exempted from the provisions of Section 94(7)

would not amount to furnishing of inaccurate particulars or concealing income on the part of the respondent - assessee.

Held

- The HC held that since the order of the Tribunal is based on finding of fact, which is not shown to be perverse, there is no reason to entertain the proposed question of law. The appeal was accordingly dismissed in favour of the respondent - assessee.