

Mere submitting an incorrect claim without malafide intention doesn't attract concealment penalty

Summary – The Delhi HC in a recent case of Udaipur Hotels Ltd., (the Assessee) held that where expenditure was disallowed due to non-availability of supporting evidence, it could not be held as giving inaccurate particulars of income, and, therefore, penalty for concealment u/s 271(1)(c) could not be levied.

Facts

- The assessee-company took over a hotel from ITDC. During the assessment proceedings, the Assessing Officer disallowed the amount claimed as revenue expenditure on account of renovation, incurred by ITDC, as assessee could not produce supporting evidence, and treated same as capital expenditure.
- The Assessing Officer also imposed penalty for concealment of income under section 271(1)(c), holding that conduct of assessee amounted to wilful and *mala fide* making of a claim which was inadmissible in law. The Commissioner (Appeals) confirmed the penalty.
- On appeal, the Tribunal deleted the penalty holding that mere submitting of a claim which is incorrect in law would not amount to giving inaccurate particulars of income.

Held

- The Delhi HC while disposing off the case stated that it was unimpressed with the revenue's contention that the assessee made a wilful or mala fide claim. One cannot be unmindful of the fact that the expenditure was primarily incurred by ITDC, and at the stage when the return was filed, the assessee could not undoubtedly produce the vouchers since the expenditure had been incurred by ITDC.
- Even if the Assessing Officer disallowed the claim only on the ground that it was capital in nature, the genuineness of the expenditure was not in doubt.
- The question whether an expenditure is capital or revenue is a debatable one, on which more than one view is possible.
- Having regard to these facts and the decisions [*CIT v. Zoom Communication (P.) Ltd.* [\[2010\] 327 ITR 510/191 Taxman 179 \(Delhi\)](#) (para 1) and *CIT v. Reliance Petroproducts (P.) Ltd.* [\[2010\] 322 ITR](#)

[158/189 Taxman 322 \(SC\)](#)] relied upon by the Tribunal, the HC held that there was no infirmity in the reasons of the order. Accordingly, no substantial question of law arises and the appeal is dismissed.

Comments

This is a welcome judgment for all assessee's who have faced summary dismissals of their cases before the Revenue Authorities since it has been becoming more of a habit that any addition arising out of assessment even when no malafides are intended by assessee, tantamount to being liable for penalty. The HC has correctly relied upon the orders of the Delhi HC in *Zoom Communication (P.) Ltd.* and the Supreme Court in *Reliance Petroproducts (P.) Ltd.*