

## No penalty for Concealment if mistake was bona fide and rectified prior to initiation of assessment

**Summary – The Allahabad High Court in a recent case of Hapur Pilkhuwa Development Authority (the Assessee) held that when assessing authority was fully aware of status of assessee as local authority, a mere wrong description of status which was rectified immediately when pointed out, could not attract penalty.**

### Facts

- During assessment proceeding, the Assessing Officer found that, in fact, the assessee was a local authority, but it had wrongly disclosed its status as Artificial Juristic Person (AJP) to claim losses which were not due to it. Thus, the Assessing Officer imposed penalty under section 271(1)(c).
- On appeal, the Commissioner (Appeals) observed that in original return, the assessee had wrongly mentioned the status but in the revised return, the correct status was mentioned. The mistake occurred due to notification of Ministry of Avas & Town Planning regarding infrastructure fund utilisation.
- Thus, the Commissioner (Appeals) deleted the penalty on the ground that the omission was *bona fide and that it is a well settled proposition of law that any error under bona fide belief does not constitute a reasonable cause*.
- On second appeal, the Tribunal upheld the order of the Commissioner (Appeals).
- On Appeal.

### Held

- On the finding by the Commissioner (Appeals) and Tribunal, it could not be said that the assessee had declared inaccurate particulars with intention to evade tax. The change in balance sheet and profit and loss account were brought on account of notification issued by Ministry of Avas and Town Planning regarding infrastructure fund utilisation. The return was accepted and, thus, the interest of revenue did not suffer in any manner.
- The HC held that a mere making of the claim, which is not sustainable in law, by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim in the return cannot amount to inaccurate particulars.
- In the present case the income tax authorities have found that wrong description of the status of the assessee (which was corrected immediately by filing revised return) and in which the loss was reduced on account of a notification issued by Ministry of Avas and Town Planning could not be treated as furnishing inaccurate particulars to attract the penalty clause under section 271(1)(c).
- There was no error in finding of Commissioner (Appeals) and Tribunal that there was no declaration of inaccurate particulars.

- The HC held that even if the mens rea may not be necessary, in attracting the penalty, the ratio of the judgment of the Supreme Court in *Reliance Petroproducts (P.) Ltd.'s case (supra)* supports the conclusions of the CIT (A) and ITAT that in this case the penalty under Section 271 (1) (c) of the Act was not attracted.
- An omission, which did not lack *bona fides* and was corrected immediately on being pointed out by the Assessing Officer before the assessment, cannot attract the penalty under section 271(1)(c), on the ground of submission of the inaccurate particulars.
- The mistake was immediately accepted and did not result into any loss to the revenue. The Court also observe that when the Assessing Officer was fully aware that Hapur Pilkhuwa Development Authority, constituted under UP Urban Planning and Development Act, 1973 is a local authority, a mere wrong description of the status should not have a ground to award penalty.
- The Assessing Officer misused her authority in imposing penalty on non-existing ground.
- Accordingly, the HC directed that no penalty could be imposed in the present case.