

No concealment penalty despite wrong claim if no inaccurate particulars reported by assessee.

Summary – The Kolkata ITAT in a recent case of Hifunda Ltd., (the Assessee) held that where assessee wrongly claimed depreciation on e-commerce site it was not a case of furnishing of inaccurate particulars and penalty for concealment was not leviable.

Held

- The issue is squarely covered by the judgment of the Supreme Court in the case of *CIT v. Reliance Petroproducts (P.) Ltd.* [\[2010\] 322 ITR 158/189 Taxman 322 \(SC\)](#), wherein it was held that where there was no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false, there would be no question of inviting penalty under section 271(1)(c).
- A mere making of a claim, which is not sustainable in law, by itself, would not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.
- The Assessing Officer disallowed depreciation on the basis that the expenses incurred on developing portal and e-commerce site cannot be treated as fixed asset, hence, depreciation on the same cannot be allowed at the rate applicable to plant and machinery. According to the Assessing Officer, the website is also not an intangible asset similar to know-how, patent, copyright, trade mark, license, etc. as mentioned in section 2(11)(b). According to the Assessing Officer, expenses incurred on developing portal and e-commerce site is neither fixed asset nor an intangible asset as per section 2(11)(b), and hence, he disallowed depreciation.
- While furnishing the return of income, an assessee is required to furnish particulars of accounts on which return of income has been arrived at. Penalty under section 271(1)(c) is imposable where the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income and any inaccuracy made in such accounts or otherwise which resulted in keeping off or hiding a portion of his income is punishable as furnishing of inaccurate particulars of his income.
- But in the present case, the Assessing Officer has not made out any such case; rather, it is only disallowance of expenditure on the basis that this is not an asset. The expenses are genuine, which are not denied by the Assessing Officer. It is not doubted that the assessee has developed the portal and e-commerce site and nothing is false. Therefore, the penalty deleted by the Commissioner (Appeals) is in terms of law and the same is confirmed. The appeal of the revenue is dismissed.