

Concealment penalty not leviable without recording finding as to concealment of income

Summary – The High Court of Gujarat in a recent case of Whiteford India Ltd., (the Assessee) held that in absence of clear finding of Assessing Officer whether assessee is guilty of concealment of income or furnishing incorrect particulars of income, penalty levied under section 271(1)(c) cannot be sustained.

The present appeal has been preferred by the appellant-revenue challenging the impugned order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B', Ahmedabad dated 09/08/2012 by which the learned Income Tax Appellate Tribunal has allowed the said appeal preferred by the assessee by quashing and setting aside the order passed by the CIT(A) confirming the order passed by the Assessing Officer imposing penalty under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

- In the appeal, the following substantial questions of law are proposed by the revenue;
 - "(I) Whether, in the facts and circumstances of the case, the learned ITAT has erred in allowing the appeal filed by the respondent assessee against the order of penalty under Section 271(1)(c) of the Income Tax Act, 1961 passed by the Assessing Officer as confirmed by the CIT(A) and thereby ignoring *Explanation 1* to Section 271(1)(c) of the Act that assessee's explanation was not proved to be bona fide?
 - (II) Whether the Tribunal is right in law and on facts to ignore the provisions of Section 271(B) of the Act inserted by Finance Act, 2008, w.e.f 01/04/1989 and delete the concealment penalty levied where furnishing of inaccurate particulars of income is evident?
 - (III) Whether the Tribunal is right in law and on facts to delete the penalty when the disallowance on which penalty levied was the only one in the assessment order and Assessing Officer initiating the penalty under Section 271(1)(c) of the Act for furnishing of inaccurate particulars of income."
- At the outset, it is required to be noted and it cannot be disputed that while passing the order under Section 271(1)(c) of the Act and imposing penalty upon the assessee the Assessing Officer used the words "inaccurate particulars of income/concealment of income". The order passed by the Assessing Officer imposing penalty came to be confirmed by the CIT(A) by interpreting the observations made by the Assessing Officer as under;

'In view of the facts and circumstances of the case, the Assessing Officer used expressing "inaccurate particulars of income/concealment of income" thereby the meaning that is inaccurate particulars of income which relates to concealment of income'.

- Being aggrieved and dissatisfied with the order passed by the CIT(A) confirming the order passed by the Assessing Officer imposing penalty under Section 271(1)(c) of the Act, the assessee preferred appeal before the Income Tax Appellate Tribunal and relying upon the decisions of this Court in the case of *CIT v. Manu Engineering Works* [\[1980\] 122 ITR 306](#) and in the case of *New Sorathia Engg. Co. v. CIT* [\[2006\] 282 ITR 642/155 Taxman 513 \(Guj.\)](#) the Income Tax Appellate Tribunal has allowed the appeal by quashing and setting aside the orders passed by the CIT(A) as well as the Assessing Officer imposing penalty under Section 271(1)(c) of the Act.
- After having heard the learned advocate appearing on behalf of the appellant and considering the observations made by the Assessing Officer, while passing the order of penalty, the HC held that it is not in dispute and/or cannot be disputed that there was no clear finding by the Assessing Officer whether the assessee was guilty of concealing the income or furnishing inaccurate particulars of the income. While considering the similar situation, the Division Bench in the case of *Manu Engg. Works (Supra)* has observed and held as under;

"We find from the order of the Inspecting Assistant Commissioner, in the penalty proceedings, that is, the final conclusion as expressed in para. 4 of the order; 'I am of the opinion that it will have to be said that the assessee had concealed its income and/or that it had furnished inaccurate particulars of such income'. Now, the language of 'and/or' may be proper in issuing a notice as to penalty order or framing of charge in a criminal case or a quasi-criminal case, but it was incumbent upon the Inspecting Assistant Commissioner to come to a positive finding as to whether there was concealment of income by the assessee or whether any inaccurate particulars of such income had been furnished by the assessee. No such clear-cut finding was reached by the Inspecting Assistant Commissioner and, on that ground alone, the order of penalty passed by the Inspecting Assistant Commissioner was liable to be struck down."

- Similar view has been subsequently expressed by another Division Bench in the case of *New Sorathia Engineering Co. (Supra)*. Considering the ratio laid down by this Court in the aforesaid two decisions and the facts of the case on hand, more particularly, when it is observed that there was no clear finding by the Assessing Officer whether the assessee is guilty of concealing the income and/or furnishing inaccurate particulars of the income and the learned Income Tax Appellate Tribunal has set aside the order passed by the CIT(A) confirming the order passed by the Assessing Officer imposing penalty under Section 271(1)(c) of the Act, it cannot be said that the Income Tax Appellate Tribunal has committed any error.

- Reliance placed upon Section 271(1)(b), which has been inserted by the finding of the Finance Act, 2005 with effect from 01/04/2006 is neither here nor there. Still the requirement while imposing the penalty under Section 271(1)(c) are required to be complied with. It cannot be disputed that while imposing the penalty under Section 271(1)(c) of the Act, two conditions are required to be satisfied i.e. (i) the assessee has concealed the particulars of his income (ii) the assessee has furnished incorrect particulars of such income. As held by the Division Bench in the case of *Manu Engineering Works (Supra)* the Assessing Officer is required to give clear finding whether the assessee is guilty of concealing the income and/or furnishing incorrect particulars of income.
- In view of the above, we see no reason to interfere with the impugned order passed by the learned Income Tax Appellate Tribunal and no substantial question of law arises. The present appeal is dismissed.