

Wrong claim made merely due to misinterpretation of amended provision won't attract concealment penalty

Summary – The Hyderabad ITAT in a recent case of M. Ravinder, (the Assessee) held that wrong claim made merely due to misinterpretation of amended provision won't attract concealment penalty.

Facts

- The assessee declared certain income which included long-term capital gains and short-term capital gains. He claimed securities transaction tax, interest paid to broker and loss on short-term capital gains from shares on which dividend was received while computing the short-term capital gains.
- The Assessing Officer added the securities transaction tax interest paid to broker and disallowance under section 94 being dividend received on shares attracting short-term capital gains of Rs. 41,95,162. With regard to the lapse of the assessee in claiming the loss on short-term capital gains on the shares in which dividend has been received by the assessee and which attracts disallowance under section 94, the Assessing Officer levied penalty under section 271(1)(c).
- The Commissioner (Appeals) deleted the penalty by holding that mere making of a claim by an assessee in his assessment which was not sustainable in law, by itself, would not amount to furnishing inaccurate particulars of income or concealment of income and such a claim made in the return could not be a reason for levy of penalty under section 271(1)(c).
- On second appeal :

Held

- It is an admitted fact that provisions of section 48 are amended with effect from 1-4-2005 as per which securities transaction tax is not allowable. Similarly, provisions of section 94(7)(b) are also introduced with effect from 1-4-2005 by the Finance (No. 2) Act, 2004. The assessee furnished full details of shares on which dividend was received and loss which was set off.
- As the assessee furnished the above information before the Assessing Officer, it cannot be said that the assessee has concealed any particulars of income. Now, the issue is limited to making a wrong claim by the assessee. The assessee explained that this is the first year of assessment after introduction of the above provisions and the claim made by the assessee, though inaccurate, was an inadvertent mistake which cannot be a reason for levy of penalty under section 271(1)(c).
- Mere making of a wrong claim by the assessee by itself shall not constitute concealment of income or furnishing inaccurate particulars of income. The Assessing Officer has to complete the assessment after verifying various claims of the assessee. It is very much necessary to verify the claim of the assessee and if it is a genuine claim it has to be allowed. The claim of the assessee could not be allowed because provisions of Act that were amended with effect from 1-4-2005 and the assessee had made a wrong claim in considering the new amendments, there was a *bona fide* error on the

part of the assessee and that cannot be a reason for levy of penalty. More so, the assessee admitted the mistake in the course of assessment proceedings. Being so, there is a reasonable cause in this case. Accordingly, the order of Commissioner (Appeals) is to be confirmed.