

AO can't slap concealment penalty on assessee merely for claiming expenditure on basis of Apex's Court verdict

Summary – The High Court of Madras in a recent case of Shriram Properties and Constructions (Chennai) Ltd., (the Assessee) held that Where assessee under bona fide belief claimed expenditure, disallowance of such expenditure could not result into penalty under section 271(1)(c).

JUDGMENT

The Revenue had sought admission of the tax case on the following substantial question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal has right in upholding the order of the Commissioner of Income-tax (Appeals) deleting the penalty under section 271(1)(c) ?"

The Tribunal rejected the Revenue's appeal following the decision of the apex court in *CIT v. Reliance Petroproducts (P.) Ltd.* [\[2010\] 322 ITR 158/189 Taxman 322](#), holding that merely because the assessee had claimed the expenditure, which was not acceptable to the Revenue, that by itself would not attract the levy of penalty under section 271(1)(c) of the Income-tax Act.

It is seen from the facts of the case that the assessee claimed deduction in respect of the contribution made to the trust fund provisions for diminution in value of investments and sundry balances written off. In the course of the assessment proceedings, the assessee filed a revised memo of computation. The Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Income-tax Act holding that the assessee had not file a revised return of income to offer the amount as income for the purpose of assessment. Thus, he considered it as a fit case for levying penalty. Aggrieved by this, the assessee went on appeal before the Commissioner of Income-tax (Appeals). The first appellate authority pointed out that the assessee explained the circumstances under which it made its claim and subsequently offered the said amount for assessment for avoiding protracted litigation and buying peace with the Department. The first appellate authority pointed out that the query raised by the officer, extracted in the letter dated December 11, 2009, revealed the doubt persisting in the mind of the officer as to whether the expenditure was an allowable one or not. However, the assessee filed a letter offering the said expenditure to be treated as an income, which, by itself, would not make this to be called as concealment. The declaration of the enhanced income thus belies the claim of the officer that there was concealment. Thus, the first appellate authority deleted the penalty. Aggrieved by this, the Revenue went on appeal before the Income-tax Appellate Tribunal.

The Tribunal pointed out that of the three issues, the question of addition made in respect of written off of sundry balance was considered in the quantum appeal by the assessee and the other two issues regarding contribution to the trust fund and provision for diminution in value of investments were based on the decision reported in *S.A. Builders Ltd. v. CIT (Appeals)* [\[2007\] 288 ITR 1/158 Taxman 74 \(SC\)](#). The Tribunal pointed out that though the claim on deduction made by the assessee might not be admissible the claim made, per se, would not make the particulars furnished by the assessee as inaccurate particulars.

Referring to the objection of the Revenue that the assessee had not filed a revised return, but only a revised statement, the Tribunal pointed out that even in the absence of such a statement and the additions were made by the assessing authority, it was doubtful whether such addition would lead to levy of penalty. The claim of the assessee was based on an opinion formed by the assessee based on the decision of the Supreme Court. In the circumstances, it was difficult to hold that there was concealment of income. Thus, ultimately, as a matter of factual finding, the Tribunal held that there was no case for levy of penalty. Aggrieved by this, the Revenue has filed the present tax case (appeal).

Learned standing counsel appearing for the Revenue placed reliance on the decision of the Delhi High Court reported in *CIT v. Zoom Communication (P.) Ltd.* [\[2010\] 327 ITR 510/191 Taxman 179](#). The Tribunal did not find that the decision would be of any assistance to the Revenue. The Delhi High Court reiterated the principle of law as enunciated in the decision reported in *Reliance Petroproducts (P.) Ltd. (supra)* and held that so long as the assessee had not concealed any material or the factual information given by him has not been found to be incorrect, there would be no imposition of penalty under section 271(1)(c) of the Income-tax Act. Even if the claim made by the assessee is unsustainable in law, so long as the assessee substantiated the explanation offered by him or the same is found to be bona fide, Explanation 1 to section 271(1)(c) would not stand attracted. However, when the assessee does not substantiate the explanation or the same is found to be lacking in bona fide, Explanation 1 to section 271(1)(c) would stand attracted.

When the Tribunal had come to a factual finding that there was no lacking in bona fides in the claim of the assessee originally made, we do not find any ground to accept the plea of the Revenue to admit this tax case (appeal). Accordingly, this tax case was dismissed.