

ITAT deletes concealment penalty on disclosure by assessee about his past income and payment of taxes thereon

Summary – The Mumbai ITAT in a recent case of Purnandu Jain, (the Assessee) held that where assessee admits undisclosed income for earlier years which had ended prior to date of search under section 132(4) and also specifies manner in which such income had been derived, and thereafter pays tax on that undisclosed income with interest, such undisclosed income would get immunized from levy of penalty.

Facts

- A search was conducted at premises of assessee and assessee offered a certain sum as additional income for earlier years. The assessment was framed under section 153A, accordingly.
- However the Assessing Officer levied concealment penalty and he held that benefit of *Explanation 5* cannot be extended to assessee as additional income related to earlier years.
- On appeal, the Commissioner (Appeals), had allowed benefit of *Explanation 5* to the assessee.
- On second appeal, the department submitted that the Commissioner (Appeals) had erred in coming to a conclusion that provisions of *Explanation 5* could also be applied to earlier years as the said interpretation would be contrary to the Instruction No. 1882, dated 5-6-1991 issued by CBDT. Further it was pleaded that benefit of *Explanation 5* was available only to the year in which a return had not been filed so far since the period of filing of the return under section 139(1) had not expired.

Held

- The issue as to whether or not the benefit of clause (2) of the aforementioned Explanation can be given to the assessee in respect of the years in respect of which return of income have already been filed under section 139(1) in addition to the assessment year for which the period for filing return under section 139(1) has not been expired was considered by the Madras High Court in the case of *CIT v. SDV Chandru* [\[2004\] 266 ITR 175/136 Taxman 537](#).
- It held that in cases where the assessee had not disclosed his income in the return filed for previous year which have ended prior to date of search, and in the statement given under section 132(4), the assessee admits a receipt of undisclosed income for those years and also specifies manner in which such income had been derived, and thereafter pays tax on that undisclosed income with interest, such undisclosed income would get immunized from levy of penalty.
- The construction of the provisions of *Explanation 5* put-forth by the department on the basis of Instruction No.1882 is totally contrary to the decision of Madras High Court. These instructions are issued by CBDT on 5-6-1991 while the decision rendered by the Madras High Court is dated 9-12-

2003. It was only argued that instructions issued by the CBDT are in the nature of contemporanea expositio. Such contention of the department has no force.

- The law on this issue is very much clear that wherever question regarding interpretation of a provision is applicable, the interpretation adopted by the Court will have a preference over the interpretation given by the CBDT. Therefore, this contention of the department has to be rejected particularly in view of the fact that the department could not cite any decision of any Court by which the aforementioned view of CBDT is supported. Where two interpretations are possible, levy of concealment penalty is not justified. Even according to law of precedence, the decision rendered by the Madras High Court, in absence of decision of jurisdictional High Court on the issue will have persuasive value and view has been taken after considering the relevant provisions. Accordingly, the Commissioner (Appeals) did not commit any error in deleting the penalty by following the aforementioned decision of the Madras High Court and penalty cannot be sustained on the interpretation of provisions adopted by the CBDT.