

Concealment penalty couldn't be imposed merely because ITAT confirmed quantum of additions made by AO

Summary – The Agra ITAT in a recent case of Rama Educational Welfare Society., (the Assessee) held that in course of penalty proceedings, findings recorded in quantum proceedings can be referred to and relied upon, but then confirmation of quantum addition by itself, cannot be reason enough for imposing concealment penalty under section 271(1)(c).

Facts

- The assessee was a society assessed as an association of persons (AoP). During the course of its assessment proceedings, the Assessing Officer noticed that the assessee had purchased bricks for Rs. 11.68 lakh and since the sale bills of these bricks were captioned 'cash memos', the Assessing Officer inferred that these bricks were purchased in cash.
- In reply to the show-cause notice requiring the assessee to show cause as to why said amount not be added to its income, it was explained by the assessee that the bricks were purchased on credit, as duly reflected in the books of account, and the payment was made to the vendor, by account payee cheque.
- However, since the vendor could not be produced before the Assessing Officer, he rejected the assessee's explanation and proceeded to make an addition. The assessee carried the matter in appeal before the Commissioner (Appeals) and the Tribunal, but without any success.
- The Assessing Officer also imposed a penalty under section 271(1)(c).
- The Commissioner (Appeals), however, set aside penalty order passed by the Assessing Officer.
- On revenue's appeal:

Held

- It is a matter of fact that the assessee had a reasonable, even if not acceptable to the Tribunal, an explanation for what was perceived as a discrepancy. The mere fact that the sale vouchers were titled as cash memos does not obliterate the fact that the vendor was paid for the bricks subsequently and it is thus a reasonable explanation that purchases were made on credit.
- There is nothing on record to establish, beyond a reasonable doubt, that any cash purchases did take place. It is also important to note that the Assessing Officer has not given any independent reasons for imposing the penalty but has merely referred to and relied upon the fact that this Tribunal has confirmed the quantum addition.
- This approach proceeds on the basis that a concealment penalty is an automatic consequence of the quantum addition - a proposition which has been unequivocally rejected by Courts above time and again. No doubt findings in the quantum proceedings have an important role to play in penalty

proceedings as well in the sense that these findings can be referred to and relying upon in the penalty proceedings as well, but then confirmation of quantum addition, by itself, cannot be reason enough for imposing the concealment penalty under section 271(1)(c).

- Penalty is, and cannot be, an automatic consequence of quantum addition and be justified on that count. The Assessing Officer has also brushed aside assessee's reliance on judicial precedents by observing that these precedents are distinguishable on facts and not applicable to the facts of this case, but then he has to set out the specific reasons for holding so.
- He cannot summarily make such sweeping generalizations without pointing out in what manner the cases are distinguishable and why these legal propositions laid down by these judicial precedents do not apply to the facts of this case. There is no legally sustainable merit in the approach of the Assessing Officer.
- In the result, revenue's appeal is dismissed.