

No penalty for setting off unabsorbed depreciation and losses against capital gains on wrong advice on counsel

Summary – The Chandigarh ITAT in a recent case of Sigma Steel Industries., (the Assessee) held that No penalty is to be levied under section 271(1)(c) for setting off brought forward loss and depreciation on wrong advice of counsel.

Facts

- The assessee-firm had set off the unabsorbed depreciation and business losses against the income under the head 'Capital gains' which was not allowed and penalty proceedings under section 271(1)(c) were initiated.
- In response to the show-cause notice it was submitted that set off was done under *bona fide* belief that the same were allowable. It was further submitted that as soon as the real legal position this fact came to the knowledge of the assessee immediately claim was withdrawn. Since the assessee has already declared particulars of income, penalty should not be levied.
- The Assessing Officer, however, held that penal provisions were applicable.
- On appeal:

Held

- Since the senior partner died may be the other partner who was his young son, was not fully conversant with the affairs of the firm and in the absence of tax consultant who also died he was perhaps wrongly advised to make claim for set off of brought forward unabsorbed depreciation.
- It is a settled law that a person cannot be punished for the mistakes committed by counsel for the assessee or his advisors. On the overall circumstances of the case this is not a fit case for levy of penalty.