

## No penalty if value of excess stock found during survey had been surrendered by assessee and accepted by revenue

**Summary – The Indore ITAT in a recent case of Ritesh Agrawal, (the Assessee) held that no penalty could be levied under section 271(1)(c) with respect to old stock accumulated over years, value of which was surrendered by assessee during current year and accepted by Assessing Officer; no penalty on account of valuation difference when quantity of stock remained same**

### Facts

- The assessee was engaged in the business of sale of gold ornaments. During a survey at his business premises excess stock of gold ornaments weighing 6,008.850 gms. was found. By applying the prevailing rate of gold, value of excess stock was found at Rs. 24,93,463. Assessee explained before the Assessing Officer that the excess stock was found because of old stock accumulated over a period of time in the course of business and the real value of investment was around Rs. 21 lakhs which was duly surrendered as income of the relevant previous year which was going to end after the date of survey. The assessee had also given post-dated cheques towards payment of tax against the income surrendered.
- In the assessment, the Assessing Officer accepted the declared income of Rs. 21 lakhs but made further addition of Rs. 3,93,465 on account of valuation difference.
- In quantum appeal, addition made by the Assessing Officer was upheld.
- Thereafter, the Assessing Officer levied penalty under section 271(1)(c) on the concealed income of Rs. 24,93,465, which included the amount of Rs. 21,00,000 surrendered and disclosed by the assessee in his return of income and further addition of Rs. 3,93,465 made in the assessment order.
- On appeal, the Commissioner (Appeals) deleted penalty with regard to income of Rs. 21 lakhs surrendered by assessee and accepted by department.
- On cross appeals:

### Held

- It was found that the excess trading stock was accumulation over a period of time. Moreover, such items contained different purity ranging from 82 per cent to 87 per cent. Thus, the addition of Rs. 3,93,465 was only on account of difference of opinion regarding the valuation by the registered valuer vis-à-vis valuation of the assessee. With regard to income of Rs. 21 lakhs surrendered and accepted by the department, the Commissioner (Appeals) deleted the penalty by following the decision of Delhi High Court in the case of *CIT v. SAS Pharmaceuticals* [2011] 244 CTR 51/60 DTR 258. The facts of the instant case are in pari materia with the decision relied on by the Commissioner (Appeals) wherein also excess stock declared during the course of survey was surrendered and income declared in the return was accepted by the department. Accordingly, there

is no infirmity in the order of the Commissioner (Appeals) in deleting the penalty with reference to the income surrendered at Rs. 21 lakhs which was duly disclosed in the return filed by the assessee under section 139.

- Further, addition of Rs. 3,93, 465 was attributable to impurities found in the gold which was ranging from 82 per cent to 87 per cent. However, there was no difference in the weight of gold found and the valuation difference was only difference of opinion of registered valuer vis-à-vis the valuation arrived at by the assessee, which cannot be subject-matter of penalty under section 271(1)(c) unless cogent material is brought on record to establish concealment of income by the assessee. There is no dispute to the well-settled legal proposition that the assessment proceedings and penalty proceedings are separate and the assessee has all rights to bring on record reasons for addition and the contention that such additions are not liable for penalty on account of concealment of income. Considering the entire material placed on record there is no merit in imposing the penalty with reference to the difference in value estimated by the registered valuer vis-à-vis the assessee, when the quantity of gold remained the same.