# No concealment penalty on assessee when it had declared capital gains but disputed its tax liability

**Summary – The Delhi ITAT in a recent case of AAA Portfolios (P.) Ltd., (the Assessee) held that where assessee declared in return of income long-term capital gain on sale of its shareholding and only disputed its liability to pay tax by way of a note, levy of penalty was unjustified**

**Facts**

- The assessee company, in its return, disclosed long term capital gains on sale of shares held by it. However, in computation itself, by way of a note, the assessee claimed that said sale transaction had been stayed by the High Court and, therefore, capital gain could not be taxed in the relevant assessment year.
- The Assessing Officer denied said claim and levied penalty under section 271(1)(c).
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On appeal:

**Held**

- The assessee disclosed the income in the returned income, made a claim by way of a note and the law does not bar or prohibit an assessee from making a claim which he believes is a plausible claim. The assessee's claim is duly supported by the opinion of a senior advocate department may or may not accept the assessee's claim as correct but the law does not bar an assessee from making a claim and the denial of such claim by the revenue will not make the assessee liable for penalty of concealment of income. In this case, all the relevant facts were disclosed by the assessee and it is not the case of the revenue that any facts disclosed by the assessee in the return of income were found to be incorrect or erroneous or false. In view of the above, the levy of penalty under section 271(1)(c) was not justified. Accordingly, the same is deleted.
- In the result, the appeal of the assessee is allowed.