

AO couldn't impose penalty without bringing out any specific charge for its imposition

Summary – The Kolkata ITAT in a recent case of Chandra Prakash Bubna, (the Assessee) held that Before levying penalty under section 271(1)(c), it is incumbent upon Assessing Officer to state whether penalty was being levied for concealment of income or for furnishing of inaccurate particulars of income

Facts

- The assessee filed his income tax return on certain income.
- The assessment was completed at higher income by making an addition on account of undisclosed professional income.
- The Assessing Officer imposed penalty under section 271(1)(c) on assessee.
- On appeal, the Commissioner (Appeals) sustained penalty.
- On second appeal:

Held

- Penalty under section 271(1)(c) is leviable if the Assessing Officer is satisfied in the course of any proceedings under this Act that any person has concealed the particulars of his income or furnished inaccurate particulars of the income. This is the settled law that the penalty proceedings and assessment proceedings are different. The penalty proceedings can be initiated on two charges, *i.e.*, (i) concealment of particulars of income and (ii) furnishing of inaccurate particulars of income. Both the charges are entirely different. If the proceedings are initiated on charge of concealment, then penalty cannot be levied on the charge of furnishing of inaccurate particulars of income and *vice versa*. Thus, there must be a clear finding about the charge for which penalty is imposed or initiated.
- It is incumbent upon the Assessing Officer to state whether penalty was being levied for concealment of income or for furnishing of inaccurate particulars of income. In the absence of such findings, the order would be bad in law.
- The penalty under section 271(1)(c) can be levied for either of the charge. The penalty order does not state for what default penalty is levied.
- *Explanation 1* to section 271(1)(c) cannot be applied where charge against the 'assessee' is furnishing of inaccurate particulars of income since it provides a deeming fiction *qua* concealment of particulars of income only and, consequently, cannot be extended to a case where charge against the 'assessee' is furnishing of inaccurate particulars of income. On the other hand, where charge against the 'assessee' is concealment of particulars of income, the Assessing Officer has to establish either that 'assessee' has not disclosed the particulars of income under the main provisions or the case of 'assessee' falls within the scope of the deeming fictions created under the *Explanations*. For

example, the 'assessee' might not disclose particular sales or dividend income or income from any source. Such instances would fall under the main provisions itself. In such cases, the burden is on the Assessing Officer to establish the existence of the charge on the basis of material on record.

- *Explanation 1* to section 271(1)(c) states that the amount added or disallowed in computing the total income of the assessee shall be deemed to be the income in respect of which particulars have been concealed. This deeming provision is not absolute one but is rebuttable one. It only shifts the onus on the assessee. *Explanation 1* refers to the two situations in which presumption of the concealment of the particulars of income is deemed. It is not applicable where the charge against the assessee is furnishing inaccurate particulars of the income. The first situation is where the assessee, in respect of any fact material to the computation of his total income, fails to offer an *explanation* or offers an explanation, which is found by the Assessing Officer or the Commissioner to be false. The second situation is where the assessee, in respect of any fact material to the computation of his total income offers an explanation, which, the assessee is not able to substantiate and also fails to prove that such *explanation* was *bona fide* one and that all the facts relating to the computation of total income have been disclosed by him. The presumption available under *Explanation* to section 271(1)(c), cannot be drawn unless the case of the assessee falls under either of above two situations.
- In this case, the Assessing Officer has not brought out any specific charge for which the penalty has been imposed on the assessee under section 271(1)(c). He has not brought out whether the assessee has concealed the particulars of income or whether the assessee has furnished inaccurate particulars of income.
- The assessing Officer in this case levied the penalty for both the charges without mentioning any specific charge. The satisfaction of the Assessing Officer about the concealment of particulars of income or furnishing of inaccurate particulars of such income is essential before levying any penalty under section 271(1)(c).
- The Assessing Officer, as is apparent from the penalty order, has not satisfied about the concealment of particulars of income or furnishing of inaccurate particulars of income on the part of the assessee. On this basis itself, the penalty is deleted.