

No penalty on NR as he genuinely believed that foreign income wasn't taxable in India when it was exempt abroad

Summary – The Delhi ITAT in a recent case of Wilima Wadhwa., (the Assessee) held that No penalty on NR as he genuinely believed that foreign income wasn't taxable in India when it was exempt abroad

Facts

- The assessee filed her return which was processed under section 143(1). The department received information that the assessee had received foreign remittance in US Dollars from USA but the said receipt was not declared in the return of income. In response to the notice of reassessment the assessee stated that during the course of assessment proceedings, the Assessing Officer observed that the assessee had furnished a letter stating that she received foreign remittance. The assessee also submitted to the Assessing Officer that she had to incur expenses in regard to house rent, air ticketing in terms of agreement with University of California.
- The Assessing Officer observed that for the other expenses the assessee had not furnished any material evidence on record. He therefore, disallowed 50 per cent of the other expenses as claimed by the assessee and made the addition of Rs. 4,58,548.
- The Assessing Officer also initiated the penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
- The assessee in the penalty proceedings submitted that she used to file income tax return in USA. When she came to India, she was not aware that her income in the US had become taxable in India. When this was pointed out, she immediately revised her income tax return and paid tax accordingly. After that, she had been regularly showing her US earnings in income tax returns for assessment year 2011-12 and assessment year 2012-13. In view of the above, the assessee requested not to impose penalty.
- The Assessing Officer however did not find merit in the aforesaid submission of the assessee and levied the penalty under section 271(1)(c).
- On appeal:

Held

- In the present case, it is an admitted fact that the assessee was a non-resident till the assessment year 2002-03, thereafter she shifted to India. The assessee was earning honorarium from the University of California, Irvine as there was a treaty between the USA and the India, the amount so received by the assessee was not taxable in the USA. The assessee was under a *bona fide* belief that the income earned in the USA was exempt under the DTAA between USA and India and this fact was disclosed in Form No. 1040NR for the year 2005 comprising the income tax return filed by US Non-

Resident Alien. From the aforesaid facts it appears that there was no *mala fide* intention of the assessee to either conceal any income or to furnish inaccurate particulars of income because the amount received as honorarium was disclosed by the assessee and due taxes was paid when it was pointed out that the said amount *i.e.* foreign remittance in USD received from USA was taxable. In the present case, the Assessing Officer also made the addition by disallowing 50 per cent of the expenses claimed by the assessee on account of her visit to University of California. The said disallowance was purely on *ad hoc* basis, so it cannot be said that the assessee furnished inaccurate particulars of her income or concealed the income. The present case can be a good case for making the addition but not for levying the penalty under section 271(1)(c). Therefore, considering the peculiar facts of this case deem it appropriate to delete the penalty levied by the Assessing Officer and sustained by the Commissioner (Appeals).