

Disclosure of income in notes to accounts instead of P&L A/C won't be deemed as furnishing of inaccurate particulars

Summary – The High Court of Calcutta in a recent case of Pilani Investment & Industries Corporation Ltd., (the Assessee) held that where assessee received interest with amount of refund but did not include it in his profit and loss account under a bona fide belief that since matter was subjudice, it was not be included in profit and loss account but disclosed same in notes to accounts it could not be said that assessee had furnished inaccurate particulars of income

Facts

- During the financial year 2004-05 the assessee received interest with the amount of refund arising from orders passed by the Commissioner (Appeals) for the assessment years 1993-94 to 1996-97.
- The revenue appealed against the order of the Commissioner (Appeals) before the Tribunal. Since the matter was subjudice, the assessee did not include the income arising out of the aforesaid amount of interest in his profit and loss account but disclosed the same in the notes to the accounts.
- During the assessment proceedings the assessee when asked to justify the omission, stated that since the department had gone into appeal against the order of the Commissioner (Appeals), the interest income being a matter of contingency, had not been credited to the profit and loss account.
- The Assessing Officer rejected the explanation furnished by the assessee and by an order made an addition of Rs. 101.45 lakhs to the taxable income. Subsequently the Assessing Officer initiated penalty proceedings under section 271(1)(c) and imposed penalty of Rs. 37.12 lakhs both for the concealment of income as well as furnishing of inaccurate particulars of income.
- On appeal, the Commissioner (Appeals) allowed the appeal of the assessee and set aside the order imposing penalty.
- On appeal by revenue, the Tribunal upheld the order of the Commissioner (Appeals).
- On revenue's appeal to the High Court:

Held

- The Assessing Officer in his order imposing penalty has observed that penalty could be imposed both for the concealment of income as well as furnishing of inaccurate particulars of income. Though the assessee has disclosed the said interest income but failed to offer the said interest income received during the year for taxation.
- Hence, the Assessing Officer himself admitted that the assessee had disclosed the said interest income. Disclosure and concealment cannot co-exist. When a finding is recorded that disclosure was indeed made then the conclusion as regards concealment is bad. Furthermore it cannot also be said that the assessee had furnished inaccurate particulars of income. This is so because there was no

material on record to indicate that the particulars furnished by the assessee were factually incorrect. As held in *CIT v. Reliance Petroproducts (P.) Ltd.* [\[2010\] 322 ITR 158/189 Taxman 322 \(SC\)](#) merely making a claim which is not sustainable in law by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee.

- The conditions precedent under clause (c) of section 271(1) is that the assessee should have concealed the particulars of his income or furnished inaccurate particulars. As per the assessee his case is covered by *Explanation (B)*. In order to bring the case within *Explanation (B)* following conditions have to be fulfilled:—
 - (a) The assessee offers an explanation which he is not able to substantiate;
 - (b) The assessee fails to prove that such explanation is bona fide; and
 - (c) The assessee fails to prove that all the facts relating to and material to the computation of his total income have been disclosed by him.
- It may be true that the Assessing Officer did not accept the explanation offered by the assessee and made additions which the latter did not challenge in appeal but it is also true that the Tribunal in its judgment opined that 'since the matter is subjudice it is not a realized or realizable income in the hands of the assessee'. In that view of the matter even the first condition was not satisfied. As regards the second condition there is concurrent finding of the Commissioner (Appeals) and the Tribunal that the explanation was bona fide. This finding is not under challenge. It is not even alleged that the assessee failed to prove that all the facts relating to and material to the computation of his total income were not disclosed by him. Thus, the requirements appearing from the explanation remain unfulfilled. As a result section 271(1)(c) cannot operate against the assessee.
- In order to determine as to what amounts to a *bona fide* explanation or what amounts to a *bona fide* defence in an application, for final judgment in a suit, under Chapter XIII A of the Calcutta High Court Rules (Original Side) which is in *pari materia* with sub-rule (5) of rule 3 of order 37 of the Code of Civil Procedure, 1908, the judicial pronouncements may be referred to.
- In *Kiranmoyee Dassi v. J. Chatterjee* AIR 1949 Cal. 478, the plaintiff had filed an application for final judgment under chapter XIII A of the Calcutta High Court Rules in a suit for recovery of possession, arrears of rent and *mesne* profits. After an extensive review of the authorities this Court culled out the following principles:-
 - (a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.
 - (b) If the defendant raises a triable issue indicating that he has a fair or *bona fide* or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.
 - (c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shows such a state of facts as leads to the inference that at the trial of the action

he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

- (d) If the defendant has no defence or the defence set-up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.
- (e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.
- The standard laid down in clause (b) of the aforesaid judgment in *Kiranmoyee Dassi's case (supra)* for determining a *bona fide* defence is also applicable to the question whether the explanation offered by the assessee is *bona fide* for the purpose of clause (B) of *Explanation-1* to section 271(1)(c).
- Therefore, the assessee cannot be held to have furnished inaccurate particulars or concealed particulars of his income. Hence, the imposition of penalty under section 271(1)(c) was rightly set aside both by the Commissioner (Appeals) and the Tribunal.
- In that view of the matter, it is to be held that the mere disclosure of the amount of interest earned on the income-tax refund in the notes to accounts, without including the same in the computation of the total income, constituted *bona fide* belief of the assessee that such interest income was not exigible to tax on actual receipt of the said income. The assessee was justified in treating the interest received on income-tax refund as being contingent in nature, although there is no provision to that effect in the Income-tax Act, 1961 and income is to be taxed either on accrual or receipt basis and hence it could not be said that the assessee in the instant case has furnished inaccurate particulars of income considering the judicial view that interest received on refund of income tax is liable to be taxed in the year of receipt notwithstanding the fact that quantum appeals are pending before the appellate authority. The appeal is, thus dismissed.