

## No concealment penalty if assessee duly paid tax after realizing that travelling expense was untenable: HC

**Summary – The High Court of Madras in a recent case of Smt. Anita Kumaran, (the Assessee) held that where assessee realizing that expenditure claimed towards travelling was untenable under section 57 and therefore, paid tax on same, there was no concealment of income and, thus, penalty under section 271(1)(c) could not be levied**

### Facts

- The assessee claimed deduction towards expenditure incurred on travelling etc., under section 57 and returns were filed.
- During the course of assessment, the Assessing Officer asked the assessee to produce supporting materials for the deduction claimed under section 57. The assessee explained before the Assessing Officer that no records were maintained. Accordingly, it was offered for taxation voluntarily. According to the revenue, it was a clear case of concealment of the income and, thus, he issued notice under section 271(1)(c) for initiation of penalty proceedings.
- The Commissioner (Appeals) dismissed assessee's appeals.
- The Tribunal allowed the assessee's appeals and reversed the order of Commissioner (Appeals).
- On appeal:

### Held

- In *CIT v. Reliance Petroproducts (P.) Ltd.* [\[2010\] 322 ITR 158/189 Taxman 322 \(SC\)](#), it was held that a mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, attract the penalty under section 271(1)(c).
- In the instant case, what has emerged is that the assessee, having realised that the expenditure claimed towards travelling under section 57 was not tenable, offered the amounts expended to be added to her income and, accordingly, paid the requisite tax and interest upon the same. Thus, this was not a case, where the assessee could be said to have either concealed particulars or furnished inaccurate particulars of her income.
- It was, essentially, a case, where, an untenable claim for deduction of travel expenditure under section 57 had been made and that too based on the advice of a professional, *i.e.*, an accountant.
- Therefore, no interference is called for with the judgment of the Tribunal.