

No penalty just because assessee withdrew rebate claim during assessment which it had claimed inadvertently

Summary – The High Court of Madras in a recent case of Gopalratnam Santha Mosur., (the Assessee) held that where assessee had inadvertently claimed a rebate of 50 per cent on total tax payable and on being questioned had submitted a revised computation withdrawing rebate claimed and there was no allegation against assessee of furnishing inaccurate particulars or concealment of income, imposition of penalty under section 271(1)(c) was not justified

Facts

- The assessee was the co-owner of the immovable property situated in Tamil Nadu and she had sold the property and paid the entire capital gain tax applicable in respect of the transaction. The assessee thereafter claimed 50 per cent of the capital gains tax as rebate under Indo-Canadian DTAA.
- On being served with notice under section 143(2), assessee had furnished all required documents called for during course of assessment. Further, on being asked by Assessing Officer about details of rebate claimed, assessee mentioned that she had inadvertently claimed a rebate of 50 per cent on total tax payable and submitted a revised computation withdrawing rebate claimed and assessment was completed. In the penultimate paragraph of the assessment order, revenue stated that penalty proceedings under section 271(1)(c) will be initiated separately.
- Thereafter, after affording an opportunity of personal hearing to the assessee, the revenue passed an order levying penalty under section 271(1)(c).
- On Writ:

Held

- Sub-section (1) of section 271 states that if the Assessing Officer in the course of any proceedings under the Act is satisfied that any person has failed to comply with the notices as specified in clause (b) of section 271 or as prescribed under clause (c) of section 271 (1) that any person has concealed the particulars of such income or furnished inaccurate particulars of such income, he may be directed to pay by way of penalty.
- Thus, it has to be seen as to whether in the instant case the assessee has concealed the income or furnished inaccurate particulars of such income. Admittedly, there is no such allegation made in the show cause notice. The notice is a printed format with some of the relevant portions left blank. In response to the notice, the assessee had submitted the reply stating that after she was served notice under section 143(2), she has furnished all the required documents called for during the course of assessment and the Assessing Officer had asked for the details on rebate claimed by the

assessee as per the DTAA and in response to such show cause notice, the assessee mentioned that she had inadvertently claimed a rebate of 50 per cent on total tax payable and submitted a revised computation withdrawing the rebate claimed.

- Thus, in the facts and circumstances, there is no concealment of income nor submitting of inaccurate information, as all the relevant details were furnished by the assessee.
- Further, there has been no misrepresentation of the facts to the Assessing Officer and that the inadvertent claim of rebate on the Tax Liability which has admittedly been paid in the other country shows the intention of the assessee in not to furnish inaccurate particulars or conceal her income.
- Though the above was the reply given by the assessee, the respondent in the impugned order would state that but for the scrutiny assessment, the assessee would not have withdrawn her claim, instead, would have received the refund of Rs.1.05 crores. This Court is unable to appreciate the reasoning assigned by the respondent especially when the matter had not attained any finality. The fact that the assessee had claimed rebate was not a frivolous claim. Probably, on the advice of the authorized representative or Chartered Accountant, at the relevant point of time, the assessee was led to believe that she is entitled to claim rebate for the taxes paid in the other country. On the notice being issued by the respondent, on being advised, the assessee has withdrawn the claim and in fact, that was accepted by the respondent and the assessment was completed by the order dated 26-8-2016. Until and unless the respondent had rendered a specific finding that the conduct of the assessee amounted to concealment of particulars of her income or furnished inaccurate particulars of such income, the question of invoking clause (c) of sub-section (1) of section 271 does not arise. In fact, certain words and expressions used in the impugned order are uncalled for. There is no reason assigned by the respondent as to how he had formed an opinion that the claim for rebate made by the assessee could be termed as furnishing inaccurate particulars of income. Mere quoting of the statutory provision is not sufficient as the Assessing Officer has to form an opinion that it was a case where penalty proceedings have to be initiated and all the more, reasons are required to justify an order of imposing penalty. These basic parameters had not been fulfilled in the impugned order.
- The facts of the present case as has been set forth above would clearly show that there was no allegation against the assessee of furnishing inaccurate particulars and the assessee on receiving a notice submitted a response stating that the claim for rebate is not allowable, the assessee had filed a revised computation statement and accordingly, the assessment was completed. Thus, the withdrawal of the rebate claimed was voluntary and in any event, the same cannot be brought within the expression concealment of particulars or furnishing inaccurate particulars.
- The respondent has not rendered any finding that the details supplied by the assessee in its return were erroneous or false or that a mere claim for rebate would amount to furnishing inaccurate particulars. Thus the impugned order cannot be sustained in the eye of law.
- For all the above reasons, the writ petition is allowed and the impugned order is quashed.