

Penalty u/s 271AAB on undisclosed income is automatic in nature: Kolkata ITAT

Summary – The Kolkata ITAT in a recent case of Amit Agarwal, (the Assessee) held that Levy of penalty under section 271AAB is automatic in nature and, thus, where assessee's accountant failed to record profits derived from commodity trading in books of account seized in course of search, impugned penalty order passed by Assessing Officer was to be confirmed

Facts

- During the course of search carried out in case of 'N' group to which assessee belonged, he disclosed an income of Rs. 3 crores towards his undisclosed income for the assessment year 2013-14 *vide* disclosure petition and the same was also duly declared in the return of income.
- The assessment thereon was completed under section 143(3) accepting the said additional income of Rs. 3 crores. The assessee also paid due taxes with interest on said additional income by way of advance tax.
- The Assessing Officer took a view that since all the cumulative conditions were duly satisfied by the assessee, he would be invited with penalty calculated at 10 per cent undisclosed income amounting as per provisions of section 271AAB(1)(a).
- The assessee submitted that it was engaged in commodities trading during the year under appeal and was not required to maintain books of account as per section 44AA of the Act as commodity profit derived was sort of windfall gain and more of a speculative nature. Hence the same would not be covered under the ambit of business income. Since there was no business income, the assessee was not required to maintain books of account under section 44AA of Act. The assessee also pleaded that it was the mistake of Accountant for not entering the commodity transaction in the books of account maintained by him. Thus, according to the assessee, his case did not fall under the ambit of undisclosed income as defined in Explanation C to section 271AAB.
- Based on the definition of undisclosed income given in Explanation C of section 271AAB, the Assessing Officer opined that since the assessee had not entered the commodity transaction in the books of account, the same took the character of undisclosed income of the assessee and hence, the penalty was automatically exigible under section 271AAB and, accordingly, proceeded to levy penalty thereon.
- The Commissioner (Appeals) opined that there was no doubt that not making entries in the regular books of account of the income earned by the assessee, was a mistake on the part of the accountant and thus imposition of the penalty under section 271AAB was not justified. It was so, because it did not prove the guilty mind and intention to conceal the income on the part of the assessee. It also did not prove that had there been no search operation, the assessee would not have declared such income in the return of income. He thus set aside the penalty order.
- On revenue's appeal:

Held

- It is not in dispute that the assessee's case falls within the ambit of section 271AAB(1)(a) of the Act as admittedly the assessee had satisfied the cumulative conditions prescribed therein. The arguments of the assessee cannot be accepted that he is not required to maintain books of account under section 44AA of the Act for his commodities transactions, in view of the fact that the assessee himself had considered his case to be eligible for tax audit and had accordingly, filed the return of income under section 139(1) of the Act on 30-09-2013 for the assessment year 2013-14.
- It is not in dispute that the due date for filing return of income for non-tax audit assesseees is 31-07-2013 for the assessment year 2013-14. In the instant case, the assessee himself had accepted the fact that he is engaged in commodities trading business and, accordingly, he is mandated to maintain books of account under section 44AA of the Act. It is not in dispute that as on date of search *i.e.* 01-08-2012, the assessee had not entered the commodities transaction in its books of account. Hence, as per the definition of undisclosed income given in *Explanation C* to section 271AAB of the Act, the additional income disclosed by the assessee indeed takes the character of undisclosed income.
- The legislature in its wisdom had consciously omitted to include section 271AAB of the Act in the provisions of section 273B of the Act. Hence there is no requirement to look into any reasonable cause adduced by the assessee warranting grant of any immunity from levying of penalty under section 271AAB of the Act. Hence, even assuming that the mistake lay on the part of the accountant by not entering the entries in the books of account regarding the commodities transaction, which might tantamount to reasonable cause, the assessee would still be exigible for levy of penalty as no immunity could be claimed in terms of section 273B of the Act.
- The Commissioner (Appeals) had looked into irrelevant circumstances for deleting the levy of penalty in the instant case forgetting the fact that the levy of penalty under section 271AAB of the Act is automatic in nature as per the plain reading of the provisions of the Act. Hence, the Assessing Officer had rightly levied penalty at 10 per cent of undisclosed income amounting to Rs. 30 lakhs in the instant case. Accordingly, the ground raised by the revenue is allowed.
- In the result, all the appeals of the revenue is allowed.