

Penalty couldn't be levied just because legal representative failed to explain source of investment of assessee

Summary – The High Court of Madras in a recent case of Dr. K.C.G Verghese, (the Assessee) held that where in course of block assessment, no penal proceedings had been initiated against assessee, when he was alive and, moreover, assessment had not been done in hands of legal representative, penalty could not be levied on legal representative

Facts

- A search proceedings was carried out in case of assessee. In course of block assessment, assessee declared certain undisclosed payment made for purchase of land.
- The Assessing Officer passed block assessment order wherein apart from other additions, aforesaid undisclosed payment was added to assessee's income. On appeal, addition of undisclosed income was upheld. During pendency of further appeal before the Tribunal, assessee died. The legal representative of the assessee withdrew the appeal filed before the Tribunal. Consequent to disposal of the appeal, the Assessing Officer passed a penalty order under section 158BFA(2).
- The Tribunal opined that merely because the legal representative withdrew the pending appeal after the expiry of the assessee and the legal representative was not in a position to explain the source of investment, it could not be a reason for levying penalty under section 158BFA(2). Accordingly, the penalty levied under section 158BFA(2) was deleted.
- On revenue's appeal:

Held

- Upon perusal of sub-section (2) of section 158BFA, it is evident that the Assessing Officer or the Commissioner (Appeals) has the power to impose penalty in course of any proceedings, on the undisclosed income determined by the Assessing Officer under clause (c) of section 158BC. As per section 159(1), the legal representatives shall be liable to pay in the like manner and to the same extent as the deceased, any sum which the deceased would have been liable, if he had not died.
- As per section 271(1)(c) penalty can be levied only on that person who has concealed the particulars of income or filed inaccurate particulars of income. The use of the words 'such person' in section 271(1)(c) clearly mandates the authority to levy penalty only on the same person who has filed the return of income and concealed the particulars or filed inaccurate particulars in such return. In the present case, return was filed by the deceased but penalty has been levied on the legal representatives. In the case on hand, return has been filed by the deceased assessee, against whom, no penalty proceedings have been initiated and levied any sum. Penalty was not levied on the same person.

- There is no definition of the word 'proceeding' in Act. In *Keshab Narayan Banerjee v. CIT* [2002] 125 Taxman 299/252 ITR 888 (Cal.), in the context of section 263, the Court held that since 'proceeding' has not been qualified in section 263, it cannot exclude any proceeding and cannot be confined only to mean a proceeding for assessment, by the ITO. Similarly, in section 159(2), the word 'proceeding' has not been clarified. Therefore, the same cannot be confined to mean the proceeding for assessment, would also cover the proceeding for penalty also.
- In the present case, pursuant to a search, under section 132, order under section 158BC read with section 143(3), has been passed. Therefore, in the assessment order, apart from other additions, undisclosed income on account of investment in land was made. On appeal by the assessee, addition of undisclosed income was upheld and further appeal was made before the Tribunal and during the pendency of the appeal, the assessee died. The legal representative of the assessee withdrew the appeal filed before the Tribunal. Consequent to the disposal of the appeal, penal proceedings under section 158BFA(2) have been initiated in the block assessment order.
- Penal proceedings have been initiated, only after the withdrawal of the appeal, filed by the deceased assessee, before the Tribunal, at the instance of the legal representative of the deceased assessee. If the word, 'proceedings', includes 'penal proceedings', then the same should have been taken before the death of the deceased. The assessee expired on 14-2-2006. Appeal came to be dismissed as withdrawn. Only after the withdrawal of the appeal, proceedings under section 158BFA(2) have been initiated only on 31-3-2008, in the block assessment order.
- Section 159(1) imposes a liability on the legal representatives to pay any sum (including interest and penalty) in the like manner and to the same extent, as the deceased, had he not died. Liability to pay 'any sum' arises only after an order is passed either for assessment or for penalty or for interest. Section 159(2) provides that (1) for making assessment in the hands of legal representatives and (2) for levying any sum (including interest and penalty) in the hands of legal representatives, proceedings taken against the deceased before his death would continue against the legal representatives.
- Clause (b) of section 159 deals with a situation where no proceedings were initiated against the deceased, but could have been initiated against him, since he had expired and the same can be initiated against the legal representatives. In case, where the deceased earned income but did not file the return and expired, notice to file the return can be issued to the legal representatives and proceedings can be taken against the legal representatives. Clause (a) deals with a situation where proceedings have been initiated against the deceased, when he was alive, but before finalizing expired. Clause (a) provides that those proceedings would continue against the legal representatives, from the stage at which they stood at the time of the death of the deceased.
- A fiction is created whereby proceedings initiated against the deceased when he was alive, would continue against the legal representatives, as they have stepped into the shoes of the deceased, without there being any effect on the legality of the proceedings. Once this legal fiction comes into operation, then clause (c) will have the consequential effect of applying all the provisions of the Act.

In the case on hand, no penal proceedings had been initiated against the assessee, when he was alive and, moreover, assessment had not been done in the hands of the legal representative and, therefore, section 159 cannot be applied to the legal representative.

- The Tribunal has properly considered the facts and provisions of the Act and held that there is no justifiable reason to impose penalty, on the legal representatives, under section 158BFA(2). Going through the material on record, finding recorded by the Tribunal is upheld.
- In view of the above the revenue's appeal is dismissed.