

## Sec. 271AAB penalty was applicable if assessee admitted undisclosed income & specified its earning manner: HC

**Summary – The High Court of Allahabad in a recent case of Sandeep Chandak, (the Assessee) held that where assessee in course of search makes a statement in which he admits undisclosed income and specifies manner in which such income has been derived, than provisions of section 271AAB would automatically attract**

### Facts

- A search was conducted in case of assessee in course of which various incriminating documents were seized. The statement of assessee was recorded under section 132(4) in which he surrendered undisclosed income of Rs. 4 crores.
- The Assessing Officer completed assessment wherein said amount was added to assessee's income. Thereupon, the Assessing Officer initiated penalty proceedings by issuing a notice to assessee.
- In response to said notice, assessee submitted his reply which was not accepted. The Assessing Officer thus passed a penalty order under section 271AAB.
- The Tribunal proceeding on basis that penalty proceedings had been initiated under section 271(1)(c), set aside penalty order.
- On revenue's appeal:

### Held

- Section 271 provides the procedure in case of failure to furnish return, comply with notice, concealment of income *etc.* Sub-clause (c) of section 271(1) provides that if the assessing authority in the course of any proceedings under the Act is satisfied that any person "has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty."
- In the present case, the regular assessment proceedings are carried out under section 143(3), which is a proceeding of assessment as so stipulated under section 143 and sub-section (3) of section 143 provides the procedure to be adopted by the assessing authority during the course of the assessment proceedings.
- Section 271AAB provides the procedure for penalty where the search has been initiated. In the present case, admittedly a search and seizure operation is carried out in which the assessee has surrendered the amount of Rs.4 crores and therefore, in view of the provisions of section 271AAB the assessee is required to pay, by way of, penalty in addition to tax, if any, a sum computed at the rate of 10 per cent of undisclosed income of the specified period or previous years. In the case where the assessee in the course of search in a statement (under sub-section (4) of section 132)

admits the undisclosed income and specifies manner in which such income has been derived, than the provisions of section 271AAB automatically attract and the proceedings are to be carried out/completed.

- In the instant case, the penalty notice has been issued under section 274, read with section 271. Section 274 provides that no order imposing a penalty shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard. In the instant case the penalty notice issued clearly indicates that the opportunity of being heard is provided to the assessee and therefore, the penalty notices has been issued under section 274 read with section 271 calling upon the assessee to show cause in writing or in person which fulfils the requirement of section 274 of the Act.
- In the present case, the provisions of section 271AB are fully applicable as of the conditions so stipulated or attracts as a search has been initiated under section 132 and during the course of search the statement of the assessee has been recorded under sub-section (4) of section 132, in which the assessee admits undisclosed income and specifies the manner in which such income has been derived.
- It is found from perusal of contents of the penalty notice that in the penalty notice, which has been issued under section 274 read with section 271, the assessing authority has clearly indicated that the proceedings under section 271AAB being initiated and the reply to the show-cause notice in writing on or before the date so as indicated will be considered before any such order is made under section 271AAB.
- There is substance in the submission of the department that the orders passed by the Commissioner (Appeals), affirming the orders of the penalty, are fully justified where the Commissioner (Appeals) has recorded a categorical finding with regard to the statement of assessee during the search and the issuance of the penalty notices under section 271AAB, which is relevant.
- Since admittedly, no proceeding under section 271(1)(c) is initiated by the assessing authority during the course of the assessment proceeding under section 143(3), the impugned penalty proceedings under section 271AAB are fully justified and are initiated in accordance with law. The order of the Tribunal cannot sustain, therefore, the same is set aside and the penalty order under section 271AAB passed by the assessing authority, confirmed by the Commissioner (Appeals), is affirmed.