

## **ITAT couldn't levy minimum penalty other than what was prescribed in statutory provisions: HC**

**Summary – The High Court of Gujarat in a recent case of Devendra Jasraj Kothari, (the Assessee) held that Even though monetary limits to file appeal before High Court cannot be applied to a writ petition filed by revenue, yet such liberty to file petition cannot be lightly granted as same has to be entertained only when judgment of Tribunal is likely to have long-term or cascading effect or would result into gross miscarriage of justice**

**Statutory provisions contained in section 271(1)(c) envisaging penalty which would be 100 per cent of tax sought to be evaded and which may go up to 300 per cent thereof, could not be bypassed by Tribunal by suggesting that minimum penalty imposed on assessee could be only up to profit element embedded in cash deposits which remained unexplained in course of assessment**

### **Facts**

- The assessee filed his return declaring certain taxable income. During the course of assessment, the Assessing Officer noticed that the assessee had deposited a sum of Rs. 43.78 lakhs by cash in his savings bank account. The assessee contended that he was in the business of used clothes in which, the profit margin was as low as 3 per cent to 4 per cent. The Assessing Officer rejected such defence and added the entire amount as assessee's unexplained cash credits. The Assessing Officer also imposed penalty under section 271(1)(c) at 100 per cent of the tax sought to be evaded which came to Rs. 13 lakhs.
- The Tribunal, in principal, accepted the assessee's version that he was running a small business. The Tribunal, therefore, held that the penalty could be imposed in proportion to the profit of the business which the assessee might not have offered to tax. Without saying so effectively, the Tribunal considered 10 per cent of the total deposits as the assessee's profit from the business and that was how the penalty was reduced to about 1/10th of the originally imposed.
- The revenue has filed instant petition for two reasons. Firstly, the Tribunal had exceeded its jurisdiction. It was pointed out that under section 271(1)(c), the discretion to impose penalty ranged between equivalent to amount of tax sought to be evaded to three times that much. The Tribunal imposed penalty which was 10 per cent of the tax sought to be evaded which was wholly impermissible. The other reason for the revenue to file petition was that as per CBDT circular, dated 10-12-2015, no appeal would be filed before the High Court if the tax effect was less than Rs. 20 lacs.

### **Held**

- It may be possible for the revenue to argue that the monetary limits set out by CBDT are for filing appeals before various foras including the High Court and the Supreme Court. These limitations imposed under the circular cannot be applied to a writ petition that may be filed by the revenue.

However, when one recognizes the philosophy behind issuance of the said circular which happens to be to reduce litigation, such liberty to file writ petition even if available cannot be lightly granted. In a rare and exceptional case, the Court may entertain a writ petition filed by the revenue ignoring the monetary limit set out by the CBDT for filing the appeal particularly, when the judgment of the Tribunal is likely to have long-term or cascading effect or would result into gross miscarriage of justice of such like. Under the circumstances, this petition cannot be entertained.

- Before closing however, the court records disapproval of the approach adopted by the Tribunal while reducing the penalty. In plain terms, statutory provisions contained in section 271(1)(c) it envisaging penalty which would be 100 per cent of the tax sought to be evaded and which may go up to 300 per cent thereof. The Tribunal, however, found a way to bypass this minimum limit by suggesting that the profit element embedded in the cash deposits could be subjected to penalty. When the proceedings of assessment in which the additions in the hands of the assessee were made, the Tribunal could not have ignored such final conclusions by simply adopting the different mode or yardstick to judge the amount of tax sought to be evaded by the assessee.