

Admitting additional income in revised return after survey won't preclude AO from levying penalty

Summary – The High Court of Madras in a recent case of Khandelwal Steel & Tube Traders., (the Assessee) held that Explanation as to why there was an omission or wrong statement in original return must be due to bona fide inadvertence or bona fide mistake on part of assessee and even if assessee agreed to addition with a condition that penalty could not be imposed, department is not precluded from initiating penalty proceedings

Facts

- During the course of survey, incriminating evidences regarding the purchase were found. The stock statement showed a negative figure and there was a difference in closing balances in case of four sundry creditors and the assessee accordingly filed revised return admitting additional income to purchase peace with department.
- The Assessing Officer held that the assessee did not prove the credit balance in the account of the two concerns and only as a result of this, the assessee offered additional income and but for the survey conducted by department the assessee might not have agreed to the addition and hence, it cannot be said that addition was made voluntarily and, thus on fact, it cannot be said that the assessee voluntarily offered income and thus, taking into facts and circumstances of the case levied minimum penalty.
- The assessee also filed petition under section 264 for revision of the assessment order by contending that the Assessing Authority had not granted any opportunity to the assessee to reconcile the closing balance and had arbitrarily foisted allegations of irregularities and deficiencies in the assessee's account that were factually and legally untenable and incorrect.
- The Commissioner (Appeals) observed that the quality of evidences positively justified levy of penalty under section 271(1)(c), as *mens rea* had been fully established with deduction of evidence against the assessee and the assessee having accepted the same by filing revised returns.
- On appeal, with regard to the levy of penalty, the Tribunal held that levy of penalty was justified, when the assessee had agreed to certain additions on the specific contention that the penalty would not be levied by the department.

Held

- It is an admitted fact that after the survey operations, the assessee filed revised returns. The revised returns is deemed to be a voluntary action of the assessee, as there is nothing on record to show that for certain other reasons, the assessee had filed revised returns. Therefore, the Tribunal was justified in rejecting the case of the assessee stating that because the revenue assured that the penalty proceedings will not be initiated, if addition is admitted, revised returns were filed.

- The revised returns filed by the assessee, cannot be termed to be voluntary, as it was done by the assessee after the revenue deducted non-disclosure, inflation of purchases and concealment of income during the search proceedings.
- The Tribunal while approving the view taken by the Commissioner (Appeals) held that there was specific evidence in respect of inflation of stock, inflation of purchase, inflation of sundry creditors, etc., which constitute valid evidence for holding that the assessee has concealed its income. Further, it was pointed out that the assessee when confronted with these materials, had accepted the inflation and offered income for taxation and the assessee has no suitable explanation against the evidences found during survey.
- The assessee would persistently state that the closing balances with reference to four suppliers were not considered. On a perusal of the order passed by the Commissioner (Appeals), it is seen that during the course of survey, incriminating evidences regarding the purchase were found and the statement of the assessee were recorded. The stock statement showed a negative figure and there was a difference in closing balances in case of four sundry creditors and the assessee accordingly filed revised return admitting additional income. Thus, during the search, there was specific evidence on account of stock, on account of purchases, sundry creditors and closing balances of the stock. The assessee was given an opportunity to explain and he nowhere rebutted the evidences, which were recovered during the course of survey. Thus, in the absence of any explanation, the assessee has come forward by filing revised return. Thus, the stand taken by the assessee that the contentions advanced by the assessee were not considered by the Commissioner (Appeals) or for that matter the Tribunal could not be agreed.
- It was argued that merely by filing a revised return and offering additional income will not by itself be a ground to levy penalty. This is a broad legal principle, but has to be applied by taking note of the facts of each case. The assessee has to satisfy the test that he has a satisfactory explanation regarding such income offered in the revised return. The explanation as to why there was an omission or wrong statement in the original return must be due to *bona fide* inadvertence or *bona fide* mistake on the part of the assessee and even if the assessee agreed to the addition with a condition that penalty could not be imposed, the department is not precluded from initiating penalty proceedings. In the instant case on facts, it was found that there was no such assurance.
- The materials, which were recovered during the search proceedings, reveal concealment of income and the assessee agreed for the additions and it would be too late for the assessee to now state that the authorities are not justified in levying penalty, especially when the assessee had no satisfactory explanation as to why he had offered income in the revised return.
- It is a settled legal position that the burden is on the assessee to prove non-concealment against additional income disclosure in the revised return. In the instant case, no explanation was offered for not having disclosed income earlier. Thus, for the above reasons, the order passed by the Tribunal was perfectly correct and the questions of law framed for consideration, are to be answered against the assessee and in favour of the revenue.