ITAT upheld concealment penalty as non-deduction of TDS wasn't a bona fide belief for non-taxability of income

Summary – The Chandigarh ITAT in a recent case of Nitin Chauhan., (the Assessee) held that Concealment penalty was to be imposed when assessee had claimed to have omitted interest received from rural development bank FDs, being under bona fide belief of its non-taxability, but said income was found to be taxable in hands of assessee as said bank was not a development bank

Facts

- The assessee filed his return of income offering agricultural income and interest on FDs.
- The Assessing Officer observed that during the assessment year, the assessee had received an amount on account of maturity of FDR purchased from the HP State Agricultural and Rural Development Bank, Nahan. On further investigations, it was found by the Assessing Officer that there was an interest component which was received by the assessee on account of the aforesaid FDR but the same was not declared in the ITR. Apart from that, the assessee had understated his interest income received from other FD/saving accounts. The assessment under section 143(3) was completed at an income after making addition on account of interest received on Fixed Deposit Receipts by the assessee from HP State Agricultural and Rural Development Bank, Nahan.
- The Assessing Officer initiated penalty proceedings under section 271(1)(*c*) by holding that the assessee had concealed the particulars of income.
- The said penalty order had been confirmed by the Commissioner (Appeals).
- The assessee argued that it was under *bona fide* belief that the interest received from the bank was exempt as no TDS was deducted by the bank and it was conveyed by the bank that the TDS was not being deducted as it was not taxable and, thus, the assessee did not offer this interest component to taxation.

Held

- The HP State Cooperative Agricultural & Rural Development Bank Ltd. is not exempted from deducting the TDS. The assessee has shown the agricultural income even though it was not taxable in the return of income and had also shown the interest received on FDR's from other Banks. Hence, the plea that the interest on FDR's of other banks had been omitted on a *bona fide* belief that the interest on FDR's was not taxable could not be accepted and it was concluded that assessee had not disclosed the interest income on these FDRs in his return of income. The contention of the assessee has been that it was a *bona fide* mistake has been well addressed by the Assessing Officer. At the end it is clearly mentioned that the assessee had invested Rs. 40,00,000 in FDRs and the same was detected by the Assessing Officer while collecting information under section 133(6).

- Originally in the 1922 Act, section 28 which authorizes the levy of penalty contained the word deliberately in sub-section (3) for imposing the penalty for concealment.
- Because of the expression deliberately it was earlier believed that unless and until some income was intentionally concealed by a person, penalty cannot be imposed.
- From this position, it becomes clear that because of the expression 'deliberately' the Courts were of the opinion that even if explanation of the assessee was false the burden still lies with the revenue to prove beyond doubt that the assessee has concealed particulars of income. The Parliament amended the law by omitting the expression 'deliberately' in sub-section (*c*) which was omitted by the Finance Act, 1964. After such omission an *Explanation* was also inserted.
- Proviso was amended by Taxation Laws (Amendment Act and Miscellaneous Provisions) Act, 1986 with effect from 10-9-1986.
- After insertion of the *Explanation* (1) in section 271(1)(*c*), the burden has been shifted to the assessee to prove that he has not concealed the particulars of income and if such explanation is found to be *bona fide*, then penalty cannot be levied but if no explanation is given or the explanation is found to be false then penalty consequences will follow. It may be noted that whatever doubts were there regarding requirement of *mens rea* or 'deliberateness' have been removed by the Supreme Court in case of *Union of India* v. *Dharamendra Textile Processors* [2008] 174 Taxman 571/306 ITR 277. In this said decision the Larger Bench held that 'the object behind the enactment of section 271(1)(*c*) read with the Explanations indicates that the said section has been enacted to proved for a remedy for loss of revenue. The penalty under the provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C.
- Hence, keeping in view the facts and circumstances of the instant case wherein the *bona fide* has not been proved by the assessee and the revenue could bring about a clear case of concealment of income, the order of the Commissioner (Appeals) cannot be interfered with.