

Sum received on renting of terrace for installation of mobile tower taxable as house property income: ITAT

Summary – The High Court of Delhi in a recent case of Ericsson India (P.) Ltd., (the Assessee) held that where assessee failed to produce requisite documents under section 92D(3) in response to notice issued by TPO, in view of fact that said event of default occurred in March, 2014 i.e. prior to amendment dated 1-10-2014, when power to impose penalty under section 271G was with AO, impugned penalty order passed by TPO being without Jurisdiction, deserved to be set aside

Facts

- For relevant assessment year, the assessee had filed its returns. It included a transfer pricing report. The TPO apparently took cognizance of reports and desired the assessee to produce some documents under section 92D(3) in support of its case and for said purpose a notice was issued on 18-2-2014, giving time up to 25-3-2014. The assessee did not comply with the notice.
- Apparently, on 5-12-2014, second notice was issued by the TPO alleging default and proposing penalty under section 271G of the Act. The assessee contested said notice and it eventually culminated in the impugned order dated 22-6-2015, whereby, the TPO imposed penalty under section 271G upon the assessee, for non-complying with the notice and furnishing requisite documents.
- The assessee filed instant petition contending that since jurisdiction and authority to impose penalty under section 271G was with Assessing Officer till 1-10-2014, impugned penalty order passed on basis of show-cause notice issued prior to that date was invalid.

Held

- The assessee's contention was that the concealment exercise - being penal in nature, committed when the return was filed and cognizance taken by the authority, by virtue of the subsequent amendment, was not legal. It was in these circumstances that the Court held that the penalty for concealment of particulars of income for furnishing inaccurate particulars would be upon the assessing authority for satisfaction in that regard.
- In the present case, since "event of default" occurred in March, 2014 *i.e.* well prior to the date of coming into force the amendment (dated 01-10-2014), the impugned order was wholly without jurisdiction.
- For the above reasons, it is held that the writ petition has to succeed; the impugned order is hereby quashed.