

No concealment penalty just because co. treated loss on sale of assets as capital loss

Summary – The High Court of Allahabad in a recent case of Paswara Petrochem Ltd., (the Assessee) held that where assessee disclosed all material facts particulars relating to loss incurred on sale of assets, mere fact that assessee was under a wrong belief that it was a business loss whereas AO treated same as capital loss, it could not constitute a sufficient reason to impose penalty under section 271(1)(c)

Facts

- The assessee filed its return wherein loss on sale of assets was claimed as business loss. The Assessing Officer treated said loss as capital loss and added back same to assessee's taxable income.
- The Assessing Officer was also of the view that the assessee had intentionally entered the capital loss in the profit and loss account in order to decrease profits, hence, penalty order was passed under section 271(1)(c).
- The Tribunal confirmed penalty order passed by the Assessing Officer.
- On appeal:

Held

- Under the provisions of section 271(1)(c), there has to be concealment of the particulars of income by the assessee or he should have furnished inaccurate particulars of the income. The Supreme Court in the case of *Dilip N. Shroff v. Jt. CIT* [\[2007\] 161 Taxman 218/291 ITR 519](#) had explained terms 'concealment of income' and 'furnishing inaccurate particulars of income'. The Supreme Court has held that in order to attract the penalty under section 271(1)(c), *mens rea* was necessary inasmuch as the word 'inaccurate' signifies a deliberate act or omission on behalf of the assessee. Further, the jurisdiction under section 271(1)(c) is a discretionary jurisdiction vested upon the assessing authority and the amount of penalty could not be less than the amount sought to be evaded by reason of such concealment of particulars of income but it could exceed three times thereof. 'Inaccurate particulars' is not defined anywhere in the Act.
- In order to attract the provision of section 271(1)(c), the assessee must be found to have failed to prove that explanation offered is not only *bona fide* but all the facts relating to the same and material to the computation of his income have been disclosed by him. If the assessee has disclosed all facts and material in computation of his income, it cannot be said that he has furnished inaccurate particulars of his income.
- In the instant case, it is clear that the assessee has disclosed particulars of the loss in sale of assets which was not in dispute. Instead of treating that loss as capital loss the assessee had treated the same as business loss. Thus, the assessee cannot as such be said to have not disclosed all the

material facts to the computation of his income. This was a wrong belief of the assessee that loss in sale of assets could be treated as business loss and not the capital loss.

- Thus, there was no concealment of the income by the assessee and, therefore, the penalty proceedings should not have been initiated against the assessee. The impugned judgment passed by the Tribunal is set aside and appeal is allowed.