

Concealment Penalties- Post Assessment Issues- WIRC- 22.3.14.

- 1) The penalty proceedings being separate & independent, the assessee is entitled to contend that the assessee has a meritorious case, in quantum proceedings. - ***Dharamchand Shah 204 ITR 462 (Bom.);Prasanna Enterprises 244 ITR 188 (Kar.);Dhirajlal mangilal Shah 125 ITD 313: 126 TTJ (Ahd.) (TM) 644: 4 ITR 313.***
- 2) The additions in the assessment proceedings have been made on the basis of rule(s) of preponderance of probabilities. The same principles cannot be pressed into service while deciding the penalty u/s. 271(1)(c) of the Act. {See:***A.Rajendran 127 ITD 361: 134 TTJ (Chennai) 498.*** }.
- 3) Presumption under Expln. 1 to section 271(1)(c)***Roborant Investments {2006} 7 SOT 181 (Mum.). Aditya Birla Nuvo Ltd. 2012-TIOL-692-HC-MUM-IT*** Bombay High Court held that in view of the Hon'ble Supreme Court's decision in ***Reliance Petroproducts 322 ITR 158 (SC)*** no penalty can be levied merely because a claim made by the assessee is rejected and also Explanation 1 to section 271(1)(c) would have no application in such a case.
- 4) Penalty to be deleted where quantum is admitted by the HC- {Contrary Views}- Advaita Estate Development P. Ltd. 27 ITR (Trib.) 112 (Mum.); Vasant Thakoor 27 ITR (Trib.) 254 (Mum.)

5) **MAK Data 352 ITR 1 (Del.)**-affirmed by Apex Court. Subsequently explained in Gem Granites (Mad. HC).

Wrong Claim.

6) Bogus Purchases- No penalty- **Reliance Indus ITA/1641/M/2011** dt.11.12.13.

7) Capital gains disclosed only on being confronted- Penalty justified- **Chandrikaben Patel 2013- TIOL-1137-ITAT-Ahm.**

8) Where disallowance/addition is made on the facts supplied/disclosed by the assessee, then it cannot be said that the assessee has concealed any particulars and/or furnished inaccurate particulars. At best, it can be said that the assessee has made a wrong claim. -**Walter Saldhana {2011} 44 SOT 26 (Mum.)**, Making of a wrong claim does not amount to concealment of income and/or furnishing of inaccurate particulars.{
Reliance Petroproducts 322 ITR 158 (SC)}

9) Assessee had declared long term capital loss inclusive of loss incurred on sale of US 64 units—AO disallowed loss on sale US 64 units on ground that where income from particular source was exempt from tax then loss from such source could not be set off from another source under same head of income—AO initiated penalty proceedings –
CIT V/s. Nalin Shah(HUF) ITXA(Lodg.)/49-51/2013 dated March 2013 (Bom HC).

10) **Sunil Chandra Vohra 32 SOT 365: 127 TTJ (UO) 100** -failure to offer his income u/s. 2(22) (e) of the Act . Assessee cannot be expected to be familiar with all the provisions of the tax law- decision in the case of **Dharmendra Textile Processors 306 ITR 277 (SC)** considered.

- 11) **Aditya Birla Nuvo Ltd. 2012-TIOL-692-HC-MUM-IT-** in view of the Hon'ble Supreme Court's decision in **Reliance Petroproducts 322 ITR 158 (SC)** no penalty can be levied merely because a claim made by the assessee is rejected .
- 12) **IDBI V/s. Dy. CIT 42 SOT 323 (Mum.)-** In this case there was a claim of depreciation which was not allowed and assessee was not entitled for depreciation. It was held that just because the assessee's claim was found to be unsustainable, it does not follow that he should be penalized; rejection of assessee's claim does not mean that he is guilty of concealment.
- 13) **Equest India (P) Ltd. 41 SOT 225 (Mum.)-** the issue was set off expenditure in connection with maintaining race horses. As per section 74A of the Act such expenses can be set off only against gains from race horses. The assessee had claimed these expenses against other income and hence the set off was disallowed. On issue of penalty, the Tribunal held that it was not a case of concealment since it was only ineligibility of an expenditure due to application of a particular section.
- 14) **Hindalco Industries' case 41 SOT 254 (Mum.)-** the assessee had claimed set off of loss to which it was not entitled to u/s. 94(7), it had made a claim u/s. 80GGB, which was contrary to the provisions of the Act. And further the claim of deduction u/s. 80HHC was also in excess of its' entitlement. However the Hon'ble Tribunal deleted the penalty by relying on the decision of **Reliance Petro Products 322 ITR 158 (SC)**.
- 15) **Prior Period Exps- Hamlet Constructions ITA/5846/Mum./2011** dated 28th June 2013- held that inadvertent mistake of the assessee in claiming prior period expense ought not to meet with penalty. Same view in **Excel Apparels Exports P. Ltd. 2013-TIOL-1009-ITAT-MUM dt. 11.10.13.**

Bonafide Error.

16) **Price Water House Cooper 348 ITR 306 (SC); Somany Evergree Knits Ltd. 352 ITR 592** dated 21st March 2013., affirming the decision of the Hon'ble Tribunal in **ITA/1783/Mum/2009** dated 22nd September 2010

17) No penalty if a claim of assessee is disallowed- **CIT V/s. Neenu Datta 357 ITR 525 (Del.)**.

18) Year of Taxability.-Disagreement over the year in which the amount is taxable- cannot lead to penalty u/s. 271(1)(c). **Manilal Tarachand 254 ITR 630 (Guj.); Metal Rolling Works 339 ITR 373 (Bom.); Ms. Aishwarya Rai 12 SOT 114 (Mum.); Otis Elevator 27 ITR (Trib.) 303 (Mum.)**.

19) Penalty on addition on the basis of statement made in survey. concealment has to be seen vis-à-vis the return viz. whether from the return filed by the assessee, it can be found that some material has been concealed and/or inaccurate particulars have been furnished.-**CIT V/s. SAS Pharmaceuticals 335 ITR 259 (Del.)**' .

Addition on Estimate basis.

20) Assessment at flat rate viz. by estimation hence no question of penalty- **Naresh Chand Agarwal 357 ITR 514 (All.)**. Assessee filing revised P & L & agreeing to addition of 3% on account of cash deposits- **P. Rojes 356 ITR 703 (Mad.)**.

21) Amount offered by the assessee suo motu- ***CIT V/s. Blue Star Ltd. 357 ITR 669 (Bom.): Smt. Vinay Sharma 2013-TIOL-936-ITAT-Del. Prem Chand Garg 123 TTJ (Del.) (TM) 433.***

22) It is well settled that there can be penalty for concealment and/or furnishing of inaccurate particulars, where there is no evidence/finding of any concealment and/or furnishing of inaccurate particulars and the addition is made purely on estimation- ***CIT V/s. Ample Properties 335 ITR 460 (Mad.); CIT V/s. Aero Traders 322 ITR 316 (Del.); Garware Polyester ITA/312/2010 (Mumbai Tribunal) dated 4th January 2012.***

23) No penalty for ad-hoc disallowance- Kamal Sahadev ITA/6126/2012 ITAT Delhi dt. 20th Dec'13.

24) Claim of sec.80IA- claim of insurance, empty gunny bags, drums- Simplex Engg & Foundry Works P. Ltd. ITA/6108/Mum./2010-penalty justified .

25) **Wrong Head**- The treatment of a particular receipt as taxable under a particular head is a matter of opinion/view and merely because the assessee is of the view that a particular receipt is taxable under a particular head and to which the Revenue does not agree , it cannot constitute 'concealment' and/or furnishing of inaccurate particulars. ***CIT V/s. Awaita Properties P. Ltd. Income Tax Appeal no.731 of 2009 (Bombay High Court) ; CIT V/s. Tridhara Investments Pvt. Ltd. Income Tax Appeal no. 4045 of 2010. (Bombay High Court).***

26) STCG treated as business income- ***CIT V/s. Lilly Exporters 2013-TIOL-798-HC-KOL-IT.***

- 27) where addition is agreed upon by the assessee to buy peace & avoid litigation, no penalty can be levied. {See: **Marathon Nextgen Realty & Textiles Ltd. {2012} 67 DTR (Mum.) (Trib.) 249**}.
- 28) Merely because there is an addition by invoking section 50C, the same cannot *ipso facto* lead to presumption of concealment-**Renu Hingorani ITA/2210/Mum/2010. 2011-ITRV-ITAT-Mum-094; C. Basker V/s. ACIT, Trichy 2013-TIOL-39-ITAT-Mad. Dtd.12-10-12.**
- 29) Merely because disallowance was made u/s. 40(a)(ia), it does NOT follow that the assessee has concealed particulars and/or furnished inaccurate particulars - **'Tanushree Basu ITA/2922/M/2012** dated 22nd May 2013.
- 30) Cash payments-levying penalty in connection with expenditures incurred in cash on the ground that they were not verifiable and hence amounted to 'concealment'. At best, the unverifiable vouchers pertaining to cash expenditures can be said to unsustainable claim(s). It is well settled that no penalty can be levied for making claims which are unsustainable. - **'Saurabh Bansal' 41 SOT 157 (Ahd.)**'.
- 31) AO while giving effect to CIT(A)'s order cannot levy penalty- Satisfaction should have been recorded by the CIT(A)- **Padmini Mishra 2013- TIOL-956-ITAT-Del.**