



### Penalty cannot be levied if the taxpayer's claim is *bona fide*

The Punjab and Haryana High Court in its recent ruling in the case of Haryana Warehousing Corporation<sup>1</sup> has held that the penalty under section 271(1)(c) of the Income-tax Act, 1961 (the Act) cannot be levied if the taxpayer had made *bona fide* claim of exemption.

#### Facts of the case

- The State Government Undertaking (taxpayer) was created under the Warehousing Corporation Act, 1962 in order to build warehouses all over the State of Haryana for storage of food grains on behalf of the Food Corporation of India.
- The taxpayer filed nil return of income after claiming deduction of its entire income under section 10(29) of the Act for the assessment year 1993-94. The Assessing Officer (AO) allowed the exemption under section 10(29) of the Act only in respect of income derived from letting out godowns and warehouses for storage, processing or facilitating the marketing of commodities and denied the exemption in respect of income earned from all other sources.
- The AO initiated penalty under section 271(1)(c) of the Act on account of concealment of income/ furnishing inaccurate particulars of income on the income arose due to rejection of exemption. The Commissioner of Income-tax (CIT[A]) upheld the penalty levied by the AO.
- The Income-tax Appellate Tribunal (the Tribunal) observed that
  - The claim of exemption for entire income was based on the decision of Allahabad High Court in the case of U.P. State Warehousing Corporation<sup>2</sup> against which the tax

<sup>1</sup> CIT v. Haryana Warehousing Corporation [2009-TIOL-332-HC-P&H-IT]

<sup>2</sup> CIT v. U.P. State Warehousing Corporation [1992] 195 ITR 273 (Allahabad)

department's Special Leave Petition (SLP) was dismissed by the Supreme Court.

- Another SLP filed by the Rajasthan Warehousing Corporation was pending at the time of filing of return by the taxpayer against the order of Rajasthan High Court<sup>3</sup>.
  - The SLPs filed by the taxpayer itself on the same issue for the assessment year 1992-93 was granted and for the assessment year 1993-94 was pending for disposal.
  - The AO allowed the claim of the taxpayer for exemption under section 10(29) of the Act for the assessment year 1991-92 just 15 days prior to the filing of the return by the taxpayer for the year under consideration.
  - The taxpayer disclosed complete particulars of income and therefore, the criteria for levying penalty namely 'concealed the particulars of income' and 'furnished inaccurate particulars of income' were not satisfied.
- In view of above observations, the Tribunal deleted the penalty.

#### **Issue before the High Court**

Whether the taxpayer was guilty of having furnished inaccurate particulars and accordingly whether the AO was justified in levying penalty?

#### **Contentions of the tax department**

- The claim of the taxpayer for the exemption under section 10(29) of the Act was not *bonafide* since the taxpayer was aware that it was not entitled to exemption on its entire income.
- The order passed by the Tribunal deleting the penalty under section 271(1)(c) of the Act was against the decision of Supreme Court in the case of Dharamendra Textile Processors and others<sup>4</sup>. Further, the concept of law with regard to levy of penalty changed drastically in view of the above judgment since now penalty can be levied even when the taxpayer claims deduction or exemption by disclosing the correct particulars of its income. It was also contended that in view of the said judgment of the Supreme Court referred the dichotomy between penalty proceedings and assessment proceedings stands completely obliterated.
- The findings of the Tribunal that the AO allowed the claim of the taxpayer just 15 days prior to the filing of the return by the taxpayer was not sustainable since the said order was revised by the Commissioner of Income-tax under section 263 of the Act and the taxpayer did not file any appeal against that order.

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<sup>3</sup> CIT v. Rajasthan Warehousing Corporation [1994] 210 ITR 906 (HC)

<sup>4</sup> Union of India v. Dharamendra Textile Processors and others [2008] 306 ITR 277 (SC)

## High Court's ruling

- The claim of the taxpayer was *bona fide* since the taxpayer relied on the decision of the Allahabad High Court in the case of U.P. State Warehousing Corporation and the issue under consideration was still in a flux and had not attained finality at the time of filing of return of income by the taxpayer. The High Court also observed that no restrictions can be placed on the rights of the taxpayer to raise genuine claims in a tax return.
- The essential ingredients to impose penalty under section 271(1)(c) of the Act like 'concealed the particulars of income' and 'furnished inaccurate particulars of income' were not present in the case under consideration.
- The High Court also noted that the Supreme Court in the case of Dharmendra Textile Processors and others was examining a proposition concerning whether mens-rea was an essential ingredient before penalty under section 11AC of the Central Excise Act, 1944 could be levied. The issue of mens-rea does not arise in the present case because the essential ingredients for levying any penalty under section 271(1)(c) of the Act, were not present.
- The subsequent order passed by the Commissioner Income-tax under section 263 of the Act was not available to the taxpayer at the time of filing of return and the return filed by the taxpayer claiming exemption on the basis of acceptance of the previous year's return by the AO was justified.
- Accordingly, the High Court held that the taxpayer was not liable to pay penalty under section 271(1)(c) of the Act.

## Our comment

The High Court has rejected a proposition that mens-rea is an essential ingredient for levy of penalty under section 271(1)(c) of the Act. The High Court has clarified that the Supreme Court's decision in the case of Dharmendra Textile Processors and others dealt with the provisions of Central Excise Act and the issue of mens-rea does not arise in the present case. Further, the essential ingredients for levy of penalty like 'concealment of income' and 'furnishing of inaccurate particulars' were missing in the present case. Accordingly, the above decision reinforces the principle that where *bona fide* claims are made based on the true and proper disclosures, the penalty cannot be levied under section 271(1)(c) of the Act. Further, every addition cannot automatically give rise to penalty and therefore, concealment of particulars of income or furnishing inaccurate particulars of income may not be confused with an unacceptable plea for exemption from tax liability.

We would like bring to your attention a recent decision of the same High Court in the case of M/s Sidhartha Enterprises<sup>5</sup> where also the

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<sup>5</sup> CIT v.M/s Sidhartha Enterprises (2009-TIOL-349-HC-P&H-IT)

court observed that the judgment of the Supreme Court in Dharmendra Textile cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. Even so, concept of penalty has not undergone change by virtue of the said judgment. Penalty is imposed only when there is some element of deliberate default and not a mere mistake.

Recently, the Mumbai Tribunal in the case of Indiatravel Pvt.Ltd.<sup>6</sup> also held that the penalty cannot be levied where there is a genuine difference of opinion between the taxpayer and AO and the taxpayer has made a *bona fide* claim for deduction and disclosed all the necessary facts.

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<sup>6</sup> DCIT v. Indiatravels Pvt. Ltd. (2009-TIOL-412-ITAT-MUM)

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