

Notice initiating penalty under section 271(1)(c) of the Act should clearly and explicitly specify the reasons for levying the penalty

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In brief

In a recent decision¹ of the Telangana and Andhra Pradesh High Court (HC), the order of the Income-tax Appellate Tribunal (Tribunal) was upheld to drop penalty under section 271(1)(c) of the Income-tax Act, 1961 (Act). It is a prerequisite for the tax officer (TO) to specify the grounds, i.e., concealment of income or furnishing of inaccurate particulars under which penalty proceedings were initiated. In the absence of a clear and unambiguous finding, the penalty order should have been unsustainable in law.

In detail

Facts of the case

- The taxpayer was an Indian resident, who derived income from house property and interest on bank deposits during the assessment year 2010-11 and reported a loss in its return of income.
- While framing the assessment under section 143(3) of the Act, the tax officer (TO) made additions/ disallowances on account of excess interest claimed and unexplained cash deposits and reduced the loss claimed by the taxpayer.
- Further, a show-cause notice under section 271(1)(c) of the Act was

issued initiating the penalty proceedings against the taxpayer. In response to that, the taxpayer contended that penalty should not have been levied as disallowance of interest expenditure was on an agreed basis and for requirement to produce strict proof of evidence in respect to unexplained cash credit. The taxpayer had accepted the order to buy peace and avoid protracted litigation.

- The TO rejected the taxpayer's explanation and levied minimum penalty for concealment/ furnishing of inaccurate particulars of income.
- The matter was carried to the HC by the revenue authority as the Tribunal

had ruled in favour of the taxpayer.

Issues before the High Court

Whether the Tribunal was correct in deleting the penalty levied under section 271(1)(c) of the Act by the TO in view of the provisions of section 271(1B) of the Act and decision of Supreme Court the case of Mak Data Private Limited², wherein, it was specifically held that the TO was not required to record his satisfaction in a particular manner or reduce it into writing.

Revenue's contentions

- In the reply to the show-cause notice, the taxpayer explained the lapses and negligence on its part,

¹ I.T.T.A. No. 684 of 2016

² 358 ITR 593

which indicated that it was fully aware about the allegations levelled against it.

- Raising the issue of lack of clarity in the show-cause notice, for the first time before the Tribunal, was an afterthought and the taxpayer should not have been given benefit of doubt for the same.

Taxpayer's contentions

The taxpayer emphasised that there should not have been any uncertainty in the allegations that form the basis for the proposed penalty.

High Court's decision

- In the penalty proceedings initiated under section

271(1)(c) of the Act the specific ground that forms the basis thereof has to be spelt out in clear and unambiguous manner.

- The HC observed that concealment of income and furnishing of inaccurate particulars of income were two different acts. While concealment was an act of omission, furnishing of inaccurate particulars was an act of commission. The consequences of the above acts being penal in nature, the charge must be unambiguous so that the taxpayer was provided a fair opportunity to defend its case.
- In the absence of clear finding,

no relief could be allowed to Revenue that the taxpayer did not challenge the validity of the notice earlier.

The takeaways

This decision reaffirmed that positions upheld by the other HCs that the revenue authorities should clearly specify the basis for initiation of penalty in the notice itself. Issuance of printed form without specifying the particular ground will not satisfy the requirement of law.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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