

J&K High Court in H.P.Raina : In context of addition for unexplained expenditure in construction of building u/s 69C of the Act, J&K -HC has dismissed assessee's appeal against Amritsar ITAT order, thereby affirming/holding that:

- a) Therefore, in terms of Section 69C of the Act, appellant was required to explain satisfactorily the source of the expenditure of Rs. 17.00 lacs, which he had incurred for construction of the house in question. The explanation as was put forward by the appellant was repayment of loans, which were used for the construction, and payments on account of purchase of materials. Receipt of loans, utilization thereof for construction and purchase of materials were, therefore, the essential ingredients to satisfy that the payments in question were made for repayment of loans and for discharging the debts incurred on account of purchase of materials. Since there was nothing to suggest receipt of loans and utilization thereof for construction, except assertions, and at the same time there being nothing to suggest procurement of materials from those individuals, who were paid the amounts in question, nonacceptance of such assertions, to our mind, cannot be said to be based on suspicion, conjecture or surmise or by applying the rule of thumb.
- b) Learned counsel also contended that before adding the amounts in question as income of the assessee, i.e., before using the discretion, the appellant ought to have had been noticed. The Section does not require any such notice. In any view of the matter, from the day one the question was should or should not be such expenditure be deemed to be the income of the assessee and notice thereof was adequately given to the assessee. Learned counsel for the appellant contended that at the time of imposing penalty, a notice is required to be given and the same analogy should be applied while such addition is being made. The requirement of hearing the assessee and giving him reasonable opportunity of being heard before imposing penalty is a requirement of Section 274 of the Act. No such procedure has been rescribed for making additions under Section 69C of the Act. This seems to be run contrary to Cal HC ruling in 276 ITR 87; 263 ITR 89 wherein it is held that before drawing adverse conclusion to assessee u/s 68 etc, AO is duty bound to give notice to assessee seeking its explanation on his prima-facie view.
- c) *In any event, by virtue of Section 69C of the Act, it is obligatory on the part of the assessee to explain, to the satisfaction of the Assessing Officer, the source of expenditure made by him, with a rider that if the explanation is not satisfactory, the Assessing Officer may use his discretion against the assessee, which connotes an obligation to satisfy, apart from the explanation to be given by him, that there was existence of such*

*circumstances in which the assessee was placed that **he cannot be credited with having made such income of his own.***