
DISCUSSION ON SUPREME COURT RULING IN DHARMENDERA TEXTILES ON PENALTY U/S 271(1)(c)

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OBJECT/SCOPE

To deliberate and discuss the Supreme Court Larger Bench Ruling in Dharmendera Textiles on penalty section 271(1)(c) of the Income Tax Act (Act)

To deliberate and discuss the other related issues on penalty imposition under the Act

To deliberate Other latest rulings Post Dharmendra Textiles on Concealment Penalty

Relevant Provisions in the Act

- Chapter XXI Penalties Imposable Section 271 to Section 275
- Section 271(1)(c) Relevant Text "

"271. Failure to furnish returns, comply with notices, concealment of income, etc. (1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person -

...

*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, **he may direct** that such person **shall** pay by way of penalty, -*

.....

*iii) (ii) in the cases referred to in clause (c), in addition to tax, if any, payable by him, a sum which **shall not be less than** , but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income. ..."*

Relevant Provisions in the Act

- Explanation 1 to section 271(1)(c):
"Where in respect of any facts material to the computation of the total income of any person under this Act, -

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false, or

*(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section be **deemed to represent the income in respect of which particulars have been concealed.**"*

Relevant Provisions in the Act

Changing Face of Explanation 1 to section 271(1)(c)– Snap Shot

Amending Act	Nature of Amendment
Finance Act, 1964 as per <u>CBDT Circular No. 98/1964 & 28-D/1966 (on basis of UK law)</u>	Word “deliberately” omitted and explanation inserted to shift the burden
<i>Taxation Law Amendment Act, 1975 as per <u>CBDT Circular No. 204/1976 & 469/1986</u></i>	<u>On Wanchoo Committee recommendation</u> – <i>to reduce the taxpayer’s harassment and to meet the inadequacy of earlier explanation</i>
Taxation Law Amend Act 1986	Minor modification in explanation 1

Basic Purpose of Penalty In Fiscal Statues

- Justice Wanchoo Committee Report on Section 271(1)(c) Penalty (Pithisaria Page 8611 Vol. 5)

*"2.71 As the number of taxpayers increases, the tax administration has of necessity to rely more and more on voluntary compliance of tax laws by the assesses. **Appropriate penal provisions form a necessary complement to this approach as they impel compliance with tax laws by imposing additional monetary burden on those who happen to get astray.....***

*2.73 Penalty serves its purpose only so long as it is within reasonable limit.....Unduly harsh penalties thus breed only defiance of law and have to be eschewed. **The purpose of penalty should however be only to bend and not to break the taxpayer...."***

Basic Principles For Concealment Penalty u/s 271(1)(c)

- *Per SC in Hindustan Steel versus State Of Orissa 83 ITR 26 Three Judge Bench Ruling – Locus Classicus on the Subject*

“An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances..”

Basic Principles For Concealment Penalty u/s 271(1)(c)

- *Per SC in Hindustan Steel versus State Of Orissa 83 ITR 26*

*".....Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or **where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.**"*

Basic Principles For Concealment Penalty u/s 271(1)(c)

- PER Supreme Court in Cement Marketing Vs ACST Indore Two Judge Bench Ruling (Justice P.N.Bhagwati and Justice R.S.Pathak) 124 ITR 15

*"...What s. 43 of the Madhya Pradesh General Sales Tax Act, 1958, requires is that the assessee should have filed a "false" return and **a return cannot be said to be "false" unless there is an element of deliberateness in it.** It is possible that even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and **there is no reasonable explanation forthcoming from the assessee for such want of care, the court may, in a given case, infer deliberateness and the return may be liable to be branded as a false return.**"*

Basic Principles For Concealment Penalty u/s 271(1)(c)

- PER Supreme Court in Cement Marketing Vs ACST Indore Two Judge Bench Ruling (Justice P.N.Bhagwati and Justice R.S.Pathak) 124 ITR 15

“....But where the assessee does not include a particular item in the taxable turnover under a bona fide belief that he is not liable so to include it, it would not be right to condemn the return as a " false " return inviting imposition of penalty. This view which is being taken by us is supported by the decision of this court in Hindustan Steel Limited vs State of Orissa (1972) 83 Itr 26 (Sc), where it has been held”

Principles in Nutshell on Concealment Penalty

- Provisions dealing with penalty must be strictly construed. Penalty provision needs to be interpreted as it stands and in case of doubt, in a manner favorable to taxpayer. SC in 88 ITR 192 Vegetable Products and SC in 41 ITR 425
- **Penalty proceedings are separate and apart from assessment proceedings.** The assessee is entitled to take up new evidence and new pleas in penalty proceedings which may not have been adduced in assessment proceedings.
- **Although findings given in assessment proceedings are relevant in penalty proceedings but cannot operate as *res judicata*, are not conclusive..**

Principles in Nutshell on Concealment Penalty

- Penalty is not automatic/ipso facto to addition made in assessment proceedings
- Penalty is not meant to compensate the revenue loss as penalty and interest levied under section 234B/C & 220(2) are not same – SC in Pratibha Processors 88 ELT 12
- Penalty is also not akin/similar to basic “tax” as tax, interest and penalty are not different in character
- Penalty under section 271(1)(c) is not mandatory and is discretionary as borne out from a) Requirement of Show Cause Notice under section 274 b) Use of Word “MAY” in opening part of section 271(1) c) Explanation 1 to section 271(1)(c) – Bonafide established d) section 273B in case of non concealment penalties – reasonable cause immunity

REFER GUJ HC IN 190 ITR 39

Ruling of SC in Dilip Shroff – Snap Shot

- **Facts in Brief:** The assessee HUF sold a property and offered the long terms capital gains to taxation, after getting the valuation done from registered valuer as on 1/4/1982, to compute the gains.
- Assessee's valuer gave the valuation at Rs 2.50 Crores whereas deptt. Valuer made the valuation at Rs 1.14 crores (for cost/fair market value as on 1/4/1981)
- On resultant addition in capital gains, penalty was imposed u/s 271(1)(c) which was affirmed by CIT-A; ITAT and BHC (291 ITR 513)

Ruling of SC in Dilip Shroff 291 ITR 519– Snap Shot

- SC on assessee's appeal cancelled the penalty interalia observing as under:
 - **Imposition of penalty is not automatic.** Levy of penalty not only **is discretionary** in nature but such discretion is required to be exercised on the part of the Assessing Officer keeping the relevant factors in mind.
 - ***Even if the explanations are taken recourse to, a finding has to be arrived at having regard to clause (a) of Explanation 1 that the Assessing Officer is required to arrive at a finding that the explanation offered by an assessee, in the event he offers one, was false. He must be found to have failed to prove*** that such explanation is not only not bona fide but all the facts relating to the same and material to the income were not disclosed by him

Ruling of SC in Dilip Shroff 291 ITR 519– Snap Shot

- SC on assessee's appeal cancelled the penalty interalia observing as under:
 - Since the burden of proof in penalty proceedings varies from that in the assessment proceeding, *a finding in an assessment proceeding that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceeding constitutes good evidence in the penalty proceeding. In the penalty proceedings, thus, the authorities must consider the matter afresh as the question has to be considered from a different angle.*
 - A duty may be enjoined on the assessee to make a correct disclosure of income ***but if such disclosure is based on the opinion of an expert***, who is otherwise also a registered valuer having been appointed in terms of a statutory scheme, *only because his opinion is not accepted or some other expert gives another opinion, the same by itself may not be sufficient for arriving at a conclusion* that the assessee has furnished inaccurate particular

Ruling of SC in Dilip Shroff 291 ITR 519– Snap Shot

- SC on assessee's appeal cancelled the penalty interalia observing as under:
 - The order imposing penalty is quasi-criminal in nature and, thus, the burden lies on the department to establish that the assessee had concealed his income
 - The primary burden of proof, therefore, is on the Revenue. Once the primary burden of proof is discharged, the secondary burden of proof would shift on the assessee

SC in Dharmendra Textiles 295 ITR 244– referring to Larger Bench

- Comparison at Glance

Section 11AC Central Excise Act

Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, **the person who is liable to pay duty as determined under Sub-section (2) of Section 11 A, shall also be liable to pay a penalty equal to the duty so determined:**

Section 271(1)(c)

"271. Failure to furnish returns, comply with notices, concealment of income, etc.(1) If the assessing officer or the Commissioner (Appeals) or the CIT ***in the course of any proceedings*** under this Act, ***is satisfied*** that any person ...(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, **he may direct that such person shall pay by way of penalty,**

SC in Dharmendra Textiles 295 ITR 244– referring to Larger Bench

- Comparison at Glance

Section 15E SEBI Act.

PENALTY FOR FAILURE TO OBSERVE RULES AND REGULATIONS BY AN ASSET MANAGEMENT COMPANY. *Where any asset management company of a mutual fund registered under this Act, **fails to comply** with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company **shall be liable** to a penalty not exceeding five lakh rupees for each such failure.*

Section 271(1)(c)

"271. Failure to furnish returns, comply with notices, concealment of income, etc. (1) If the assessing officer or the Commissioner (Appeals) or the CIT ***in the course of any proceedings*** under this Act, ***is satisfied*** that any person ... (c) has concealed the particulars of his income or furnished inaccurate particulars of such income, **he may direct that such person shall pay by way of penalty,**

SC in Dharmendra Textiles 295 ITR 244– referring to Larger Bench

- After noting aforesaid wordings, SC in 295 ITR 244 observed that, while referring the issue to Larger Bench:

“7. In our view, the basic scheme for imposition of penalty under Section 271(1)(c) of the Income Tax Act, Section 11AC of the Central Excise Act and Rule 96ZQ(5) of the Central Excise Rules is common. We have gone through the judgment of the Division Bench dated 18-5-2007 in the case of Dilip N. Shroff v. Jt. CIT (supra).

8. We are of the view that there is a conflict of opinions between the judgments of the Division Bench of this Court in the case of Dilip N. Shroff v. Jt. CIT (supra) on one hand and on the other hand we have another judgment of this Court in the case of Chairman, SEBI v. Shriram Mutual Fund and Anr. (supra).

SC in Dharmendra Textiles 295 ITR 244– referring to Larger Bench

- After noting aforesaid wordings, SC in 295 ITR 244 observed that:

*“...Secondly, it may be pointed out that the **object** behind enactment of Section 271(1)(c) read with the Explanations quoted above indicates that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under the said section is a civil liability. Willful concealment is not an essential ingredient for attracting the civil liability as is the case in the matter of prosecution under Section 276C of the Act. While considering an appeal against an order made under Section 271(1)(c) what is required to be examined is the **record which the officer imposing the penalty had before him and if that record can sustain the finding there had been concealment, that would be sufficient to sustain the penalty....**”*

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- Relevant Extract from SC ruling:

Preliminary Contention of Additional Solicitor General (revenue's counsel):

*“It is pointed out that the proviso to Section 11A deals with the time for initiation of action. Section 11AC is only a mechanism for computation and the quantum of penalty. **It is stated that the consequences of fraud etc. relate to the extended period of limitation and the onus is on the revenue to establish that the extended period of limitation is applicable.** Once that hurdle is crossed by the revenue, the assessee is exposed to penalty and the quantum of penalty is fixed....*

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- Relevant Extract from SC ruling:

Preliminary Contention of Additional Solicitor General :contd...

*“...It is pointed out that in Dilip Shroff's case (supra) the question relating to discretion was not the basic issue. **In fact, Section 271(1)(c) of the I.T. Act provides for some discretion and, therefore, that decision has no relevance. So far as the present dispute is concerned, whether discretion has been properly exercised is a question of fact. It is submitted that Chairman SEBI's case (supra) has full application to the facts of the present case. ...**”*

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- Relevant Extract from SC ruling: Order Portion
25. The Explanations appended to Section 272(1)(c) of the IT Act entirely indicates the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The judgment in Dilp N. Shroof's case (supra) has not considered the effect and relevance of Section 276C of the I.T. Act. Object behind enactment of Section 271 (1)(e) read with Explanations indicate that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Willful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276C of the I.T. Act.

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- Relevant Extract from SC ruling: Order Portion

“26. In Union Budget of 1996-97, Section 11AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given.

27. Above being the position, the plea that the Rules 96ZQ and 96ZO have a concept of discretion inbuilt cannot be sustained. Dilip Shroff's case (supra) was not correctly decided but Chairman, SEBI's case (supra) has analyzed the legal position in the correct perspectives. The reference is answered.”

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- **Analysis of SC ruling (Respectfully submitted having utmost regard for their lordships)**
 - SC did not considered revenue's counsel contention that Dilip Shroff has no relevance and section 271(1)(c) contains some discretion.
 - SC did not considered section 271(1)(C) in light of revenue's contention that while invoking extended period u/s 11A of Excise Law burden lies on revenue, which once discharged, any duty levied will be automatically met with penalty u/s 11AC whereas section 271(1)(c) dealing with penalty for income concealment, no similar burden lies on revenue (even invoking section 148 reassessment-prima facie belief is required)

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- **Analysis of SC ruling (Respectfully submitted having utmost regard for their lordships)**
 - SC did not analyzed the glaring difference in scheme and wordings of provisions used in section 11AC Excise Law; SEBI Act Section 15E and Section 271(1)(c)
 - SC did not considered the object for present explanation in section 271(1)(c) which was inserted on Wanchoo Committee's Report interalia to mitigate the harassment caused to taxpayers from earlier explanation and to mitigate the indiscriminate levy of penalty
 - It can be viewed that SC observations as to explanation imposes strict liability and is for loss of revenue are in the nature "Obiter". (Refer SC Larger Bench Ruling in Sri Kumar Agencies on next slide)

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- SC Larger Bench on Doctrine of Application of Precedents in SRI KUMAR AGENCIES:
 - *"4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes"*

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- Analysis of SC ruling (Respectfully submitted having utmost regard for their lordships)
 - It can still be argued that subject SC ruling has not disturbed the age old law *viz penalty and assessment proceedings are separate and penalty is not ipso facto of addition made in assessment proceedings* since the same was not in consideration of Court in so far as section 11AC penalty is concerned
 - That is, only principle in context of section 271(1)(c) which seem to be emerging out of contextual reading of SC ruling is: Initial onus to prove *mens rea* do not lie on shoulders of revenue *without affecting assessee's right statutorily safeguarded under section 274 and Explanation to section 271*

SC in Dharmendra Textiles 306 ITR 277–Larger Bench Ruling

- **Certain Useful Articles since published on subject SC ruling – Snap Shot**

Author – Reference of Article	Conclusion in Brief
S.Rajaratnam The Hindu 8/12/2008	SC did not held concealment penalty is automatic
Kishore Karia etc BCAJ Dec 2008	SC did not overrule Dilip Shroff ruling on issues other than “mens rea”
J.P.ShahAdvocate BCAJ Jan 2009	SC instant ruling is “per incuriam” as did not consider earlier 3 member/larger bench rulings
R Snathanam 220 CTR 49 P.V.R Prabhakar 221 CTR 66	Instant SC ruling requires immediate reconsideration

Certain Other Important rulings on Concealment Penalty

- Guj HC in National Textile 249 ITR 125 :

“In order to justify the levy of penalty, two factors must co-exist, (i) there must be some material or circumstances leading to the reasonable conclusion that the amount does represent the assessee's income. It is not enough for the purpose of penalty that the amount has been assessed as income and (ii) the circumstances must show that there was animus, i.e., conscious concealment or act of furnishing of inaccurate particulars on the part of the assessee. The Explanation has no bearing on factor No. 1 but it has a bearing only on factor No. 2. The Explanation does not make the assessment order conclusive evidence that the amount assessed was in fact the income of the assessee. No penalty can be imposed if the facts and circumstances are equally consistent with the hypothesis that the amount does not represent concealed income as with the hypothesis that it does. ...

Certain Other Important rulings on Concealment Penalty

- Guj HC in National Textile 249 ITR 125 :
"If the assessee gives an explanation which is unproved but not disproved, i.e., it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false, the Explanation cannot help the Department because there will be no material to show that the amount in question was the income of the assessee. As we find no material difference between the original Explanation 1 and Explanation 1 as substituted, in our opinion, it has to be so construed as to harmonize it with the basic principles of justice and fairness as in the case of the original Explanation. We are guided by the commentaries of the learned authors Kanga and Palkhiwala, Law and Practice of Income-tax, volume 1, pages 1637, 1639 and 1640."

Certain Other Important rulings on Concealment Penalty

Guj HC in National Textile 249 ITR 125 : "In the instant case, the cash credits were not satisfactorily explained by evidence and documents. The parties who had advanced the alleged temporary loans were neither disclosed with their particulars nor any supporting documents were on record. Only two entries were explained. The accountant who had arranged the loan was not produced stating that he had left the service and relations with him are strained. On this state of accounts and evidence in the quantum proceedings, the Department was justified in treating the cash credits as income of the assessee but merely on that basis by recourse to Explanation 1, penalty under section 271(1)(c) could not have been imposed without the Department making any other effort to come to a conclusion that the cash credits could in no circumstances could have been amounts received as temporary loans from various parties. The assessee in the quantum proceedings failed to produce the accountant but the Department also in penalty proceedings made no effort to summon him ..."

Certain Other Important rulings on Concealment Penalty

Kerala High Court in 244 ITR 702 (Speaking through Hon'ble Justice Arjit Pasayat):

“A conspectus of the Explanation added by the Finance Act, 1964, and the subsequent substituted Explanations makes it clear that the statute visualised the assessment proceedings and penalty proceedings to be wholly distinct and independent of each other. In essence, an Explanation (both after 1964 and 1976) is a rule of evidence. Presumptions which are rebuttable in nature are available to be drawn. The initial burden of discharging the onus of rebuttal is on the assessee. Rationale behind this view is that the basic facts are within the special knowledge of the assessee ...”

Latest ITAT rulings on Concealment Penalty

- ***Delhi ITAT in Sandhya Verma 114 TTJ 933:***

Facts: During assessment proceedings, it was noticed by AO that assessee has received certain gift of Rs 5 lacs. The assessee was asked to produce donor on various occasions. By assessee failed to produce the donor and finally surrendered the amount as income (to buy peace and avoid litigation)

Whether penalty u/s 271(1)(c) leviable?

Held No relying upon *DHC in 240 ITR 880* as revenue made no attempts to prove that version of assessee is false

Similar conclusion by Del ITAT in 171 Taxman 136 (Mag) in context of penalty on surrendered NR Gifts

Latest ITAT rulings on Concealment Penalty

- ***Delhi ITAT in Giri Raj Gupta 162 Taxman 81 (Mag)***

Facts: During assessment proceedings, it was noticed by AO that assessee has received sold certain shares on certain shares on which capital gains was offered to taxation. Assessee submitted available evidence in form of broker's notes etc. AO made enquiries through Investigation wing etc. and concluded that assessee brought undisclosed income in the guise of capital gains. Finally assessee surrendered the amount as income (to buy peace and avoid litigation)

Whether penalty u/s 271(1)(c) leviable?

Held No relying upon Guj HC in 249 ITR 125 as albeit assessee couldn't succeed in proving the amount represented cap gains proceeds but it could not be proved positively that assessee's claim stood disproved

Latest ITAT rulings on Concealment Penalty

- ***Pune ITAT in Emilio 118 TTJ 971***

Facts: In original return, certain tax position was taken on certain income treating them as non taxable (on basis of some technical advise), however later on, voluntarily, the said tax position was revised and due taxes were paid (to buy peace and avoid litigation). Revenue made the consequential assessment u/s 148 of the Act where revised income was accepted.

Whether penalty u/s 271(1)(c) leviable?

Held No as assessee acted bonafidely and his total conduct points reasonable cause

Latest ITAT rulings on Concealment Penalty

- *Asr ITAT in 172 Taxman 87 Mag*

Whether in penalty order u/s 271(1)(c) it is must that AO clearly specifies on what count penalty is levied viz for inaccurate particulars or for concealment of particulars of income?

Held Yes

relying upon Guj HC in 282 ITR 642; 122 ITR 306

Case Study On Concealment Penalty

- *Case Study Where raw material were supplied to assessee's place by suppliers and assessee produced invoices; delivery challan, cheque payment details etc but assessee never visited supplier's place and when AO issued summons same came back with remark "party not known" – addition made in assessment –whether penalty attracted*
- *Arguable point: to avoid penalty*
 - *Purchase made in normal course of business*
 - *Produce reasonable evidence as obtained at the time of supply of material*
 - *Better GP rate (if any)*

Case Study On Concealment Penalty

- *Case Study Where assessee offers certain income from sale of securities, in a set of facts, under the head capital gains and same is assessed under the head business income, on same set of facts (change in head of taxation other examples: treatment of business loss from shares as speculative under explanation to sec 73; rental business income assessed under house property head etc) whether penalty under section 271(1)(c) is attracted?*
- *Held NO in following cases:*
 - *Delhi High Court in 150 Taxman 370; 163 Taxman 533*
 - *MPHC in 144 Taxman 469*
 - *Latest Special Bench of Ahd ITAT in 302 ITR 250 AT*
 - *Jp ITAT in 12 TTJ 205; Mum ITAT in 7 SOT 181*

Latest HC rulings on Concealment Penalty

Citation	Ratio Laid Down
Mad HC 172 Taxman 212; 175 Taxman 184 (P&HHC)	Loans <i>surrendered</i> as income in return filed pursuant to reopening notice – no penalty – reasst. Completed on surrender
P&HHC in 172 Taxman 26- also see 23 SOT 88	Uncorroborated freight charges <i>surrendered</i> in assessment – no penalty as mere surrender to buy peace is there
P&HHC in 303 ITR 53	On basis of sales tax inspection results, AO rejected book results and made addition for unaccounted sales – <i>no penalty leviable as no concrete evidence that goods sold by assessee</i>
DHC in 170 Taxman 471	On being asked for names and addresses of creditors, assessee <i>surrendered</i> them – asst completed as such – no penalty

Useful HC rulings on Concealment Penalty

Citation	Ratio Laid Down
P&HHC 256 ITR 447; 258 ITR 85; 258 ITR 494; 240 ITR 778	When addition is on estimated/ad-hoc basis – no penalty notwithstanding expl 1
Ahd ITAT in 93 TTJ 242; Del ITAT in 101 TTJ 553; etc	When conditional surrender accepted in TOTO – without any further investigation- no penalty leviable
BHC in 250 ITR 528	Bonafide belief/Inadvertent error/Mistaken belief of law no penalty
Held in Fav by Del ITAT in 96 ITD 406; Guj HC in 113 ITR 22; 98 ITD 187	Challenge to Jurisdictional Validity of assessment proceedings since attained finality whether possible in penalty/appeal to penalty proceedings?

Thank You

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