

In Escorts Finance (Revenue's Appeal Partly Allowed on Tax Concealment Penalty)...

"8.

It is repeatedly held by the Courts that the penalty on the ground of concealment of particulars or non-disclosure of full particulars can be levied only when in the accounts/return an item has been suppressed dishonestly or the item has been claimed fraudulently or a bogus claim has been made. When the facts are clearly disclosed in the return of income, penalty cannot be levied and merely because an amount is not allowed or taxed to income, as it cannot be said that the assessee had filed inaccurate particulars or concealed any income chargeable to tax. Further, conscious concealment is necessary. Even if some deduction or benefit is claimed by the assessee wrongly but bona fide and no malafide can be attributed, the penalty would not be levied. A fortiori, if there is a deliberate concealment and false/inaccurate return was filed, which was revised after the assessee was exposed of the falsehood, it would be treated as concealment of income in the original return and would attract penalty even if revised return was filed before the assessment is completed. Likewise, where claim made in the return appears to be ex facie bogus, it would be treated as case of concealment or inaccurate particulars and penalty proceedings would be justified.

Submission of the learned counsel for the Revenue was that merely because information in this behalf was made available in the tax audit report, would not absolve the assessee of the penalty proceedings when such a claim was ex facie bogus. She submitted that hardly 5% returns are taken up for scrutiny under Section 143(2) of the Act and assessment is made under sub-section (3) of Section 143 of the Act. Therefore, with the hope that his/her return may not come under scrutiny and may be assessed on the basis of 'self-assessment', an assessee can venture to give wrong information. Therefore, merely because information was available in the tax audit report would not absolve the assessee. What was to be seen was that whether the claim made was bogus.

13.

We are inclined to agree with the aforesaid submission of learned counsel for the Revenue. Even if there is no concealment of income or furnishing of inaccurate particulars, but on the basis thereof the claim which is made is ex facie bogus, it may still attract penalty provision..."