

**Subject: LANDMARK RULING ON CONSTITUTIONAL VALIDITY OF SECTION 271(1)(C) AMENDMENT OF FINANCE ACT 2008 BY DELHI HIGH COURT**

This ruling assumes mass importance in view of regular & huge retrospective amendments by Legislature in every Finance Bill presented with yearly Budget.....

held: “quote

(i) Section 271(1B) of the Act is not violative of Article 14 of the Constitution.

(ii) The position of law both pre and post amendment is similar, in as much, the Assessing Officer will have to arrive at a prima facie satisfaction during the course of proceedings with regard to the assessee having concealed particulars of income or furnished inaccurate particulars, before he initiates penalty proceedings.

(iii) Prima facie‘ satisfaction of the Assessing Officer that the case may deserve the imposition of penalty should be discernible from the order passed during the course of the proceedings. Obviously, the Assessing Officer would arrive at a decision, i.e., a final conclusion only after hearing the assessee.

(iv) At the stage of initiation of penalty proceeding the order passed by the Assessing Officer need not reflect satisfaction vis-a-vis each and every item of addition or disallowance if overall sense gathered from the order is that a further prognosis is called for.

(v) However, this would not debar an assessee from furnishing evidence to rebut the prima facie‘ satisfaction of the Assessing Officer; since penalty proceeding are not a continuation of assessment proceedings. [See Jain Brothers v. Union of India (1970) 77 ITR 107(SC)]

(vi) Due compliance would be required to be made in respect of the provisions of Section 274 and 275 of the Act.

(vii) the proceedings for initiation of penalty proceeding cannot be set aside only on the ground that the assessment order states ‘penalty proceedings are initiated separately‘ if otherwise, it conforms to the parameters set out hereinabove are met.

In view of the above we reject the prayers made in the writ petitions with the caveat that provisions of Section 271(1)(c) post-amendment will be read in the manner indicated above.”

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