

## Important judgements and Updates

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**Mukesh D. Manglani Ahmedabad ITAT In favour of Assessee**

ITA No(s). 556 to 558/Ahd/2018, 560 to 569/Ahd/2018 & 587 to 589/Ahd/2018, 590/Ahd/2018, 591/Ahd/2018, 592/Ahd/2018, 593/Ahd/2018, 594/Ahd/2018, 595/Ahd/2018, 596/Ahd/2018, 597/Ahd/2018, 598/Ahd/2018, 599/Ahd/2018

### Issues discussed and addressed:

- Issue No 1** Penalty u/s 271(1)(c) – No penalty for the income voluntarily disclosed during the search as the assessee was not found to be the owner of any money, bullion, jewellery or other valuable article nor the disclosed income was based on the entry in the books of accounts/documents.
- Issue No 2** Penalty u/s 271B - Income surrendered during search and further addition made in section 153A proceedings without incriminating documents found by search team do not attract penalty.

### Facts of the case with respect to issue No 1:

The assessee an individual, engaged in the business of dealing in land who was covered in a search and seizure operation u/s 132 had filed her return of income in response to the notice u/s 153A declaring total income of Rs. 13,07,960.00 inclusive of the income from agricultural operation of Rs. 16,136 only. The income declared in the return of income was also inclusive of the additional income of Rs. 4,05,795.00 disclosed during the search.

The assessment was framed by the assessing officer under section 153A/143(3) of the Act, after making the accepted addition of Rs. 3,77,790.00 on account of income relating to the land transactions deals which were not disclosed in the books of accounts, at the total income Rs. 16,85,750.00 only. Accordingly, the assessing officer initiated the penalty proceedings under section 271(1)(c) read with section 274 of the Act on account of the additional income offered in the return filed and the addition made for the land transaction deal as discussed above in the assessment framed under section 153A/143(3) of the Act.

### Held by the Authorities with respect to issue No 1:

A plain reading of the provisions of explanation 5A of section 271(1)(c) reveals that the penalty shall be levied if the assessee in the course of such initiated under section 132 of the Act was found to be the owner of any money, bullion, jewellery or other valuable article or there is some income based on the entry in the books of accounts/documents. Then, it shall be presumed that the assessee has either concealed the particulars of income or furnished inaccurate particulars of income. However in the case on hand there is no such allegation made by the authorities. Thus, it is transpired that the assessee has disclosed additional

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income in the return issued under section 153A of the Act voluntarily and without having found any income by the revenue in the manner provided under Explanation 5A to section 271(1)(c) of the Act. As such, there was not found any undisclosed income by the revenue in the course of such conducted under section 132 of the Act. Similarly, there was also no mentioned of any incriminating document in relation to the addition of Rs. 3,77,790.00 on the basis of which the addition was made by the Revenue. Thus, it is inferred that such addition was not based on the document found during the course of search. Hence there cannot be any penalty under explanation 5A to section 271(1)(c) of the Act until and unless it supported on the basis of incriminating document.

### Judgments Relied Upon by the Authorities with respect to issue No 1:

Ajay Traders v. Dy. CIT (2016) 81 taxmann.com 463 (Jp)

### Facts of the case with respect to issue No 2:

Assessee disclosed additional income return filed under section 153A. AO on such additional income disclosed by assessee, and income, added, AO levied penalty under section 271AAB.

### Held by the Authorities with respect to issue No 2:

Penalty shall be imposed under section 271AAB of the Act where there is undisclosed income within the meaning of the Explanation (c) to 271AAB of the Act. However, there was no documentary evidence found by the search team suggesting that there was any undisclosed income of the assessee. As such the voluntary income disclosed by the assessee and the addition made by the assessing officer was without having found any incriminating document in the course of search. Thus there was no undisclosed income within the meaning of the Expln. (c) to 271AAB, accordingly, no penalty could be levied by AO under section 271AAB.

### Judgments Relied Upon by the Authorities with respect to issue No 2:

Asstt. Clt v. Marvel Associates (2018) 170 ITD 353 (Visakhapatnam)

**Trushar Parimal Shah ITA No. 268/Ahd/2018 Ahmedabad ITAT In favour of Assessee**

### Issues discussed and addressed:

Section 69C - 100 % Disallowance on account of Bogus Purchase in absence of any dispute regarding corresponding sales is not justified.

### Facts of the Case:

AO made addition under section 69C on account of bogus purchases, however, without disputing corresponding sales.

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### Held by the Authorities:

It could be presumed that actual purchases were made by assessee from grey market but shown in the name of impugned parties. As assessee had already declared GP in its books of accounts by recording sales and corresponding purchases, to prevent possible leakage of revenue. Ad hoc addition at the rate of 10% of impugned purchases was sustained.

### Judgments Relied Upon by the Authorities:

ITO v. Sun Steel (2005) 92 TTJ 1126 (Ahd)

**Puspanjali Mishra ITA No. 315/CTK/2017 Cuttack ITAT In favour of Assesseees**

### Issues discussed and addressed:

Section 147 – Reopening - the reopening of assessment u/s.147 of the Act is not justified without recording satisfaction by the Assessing officer.

### Facts of the Case:

Assessee submitted that she filed return of income but notice under section 148 was by the Assessing officer without recording of "reasons of prior objections" in order sheet and also no satisfaction note of such issue got indicated and date of service of notice u/s.148.

### Held by the Authorities:

Before reopening the assessment, an assessee could receive a notice under section 148 in case the Assessing Officer believes that such assessee's income chargeable to tax might have escaped assessment. In case the assessee has proof supporting his belief, the AO would record his reasons in writing and send the assessee notice under section 148. The Assessing Officer can't just change his mind and go for re-investigation without a valid reason. In case the assessee has disclosed all the documents and correct information during the original assessment, the Assessing Officer cannot send a notice to the assessee for reassessing the same documents. Some facts or new documents which show that the income has escaped assessment should come into the light. In case the new information or documents come to light indicating that the individual has concealed income, then the AO could take action against such assessee under section 147 and 148.

The assumption of jurisdiction u/s. 147 by the AO is without reasons record and proper service of notice u/s. 148 of the Act and is bad in law and reassessment proceedings and all consequent orders including reassessment order dated 17.3.2015 are consequently liable to be quashed.

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### Judgments Relied Upon by the Authorities:

- a. *Mithlesh Kumar Tripathi Vs CIT [2006] 280 ITR 16 (All)*
- b. *Prashanth Projects Ltd v. CIT [2011] 333 ITR 368, (Bom)(HC)*