DIRECT TAXES CASE STUDY

FOR

CA FINAL MAY 2013

COMPILED BY

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Source / Journals Referred:

≈ **Itatonline.org, Income tax Review: Monthly journal of The Chamber of Tax Consultants, BCAJ (Bombay Chartered Accountant Society) Monthly journal, AIFTP: All India federation of Tax Practioner Journal , Taxmann.com, Taxman : The tax law weekly, SOT : Selected Orders of ITAT, ITD : Income Tax tribunal decisions, DTR : Direct Tax Reporter, ITR : Income Tax Reporter, CTR Encyclopedia of Income Tax Law.**

All the case decisions compiled below are selected on the basis of their practical applications in the Income Tax proceedings. These cases are pronounced between the periods April 2012 to Nov 2012 specifically applicable for CA FINAL MAY 2013 term.

❖ Section 2(15) - Coaching classes conducted by ICAI for a fees is not a business activity and hence exemption u/s 23C(vi) cannot be denied : [Institute of Chartered Accountants of India (ICAI) v. Director General of IT (E) (Delhi HC)]

The Institute of Chartered Accountants of India [ICAI] has claimed exemption u/s 10(23)(vi). The exemption was denied by the department from A.Y. 2006-07 onwards on the grounds that

(i) ICAI was holding coaching classes and, therefore, was not an educational institution as per sec. 2(15);

(ii) ICAI was covered under the last limb of charitable purpose, i.e., advancement of any other object of general public utility. In view of the amendment made in sec. 2(15) of the Act with effect from April 1, 2009, for the asst. year 2009-10 onwards, the Institute was not entitled to exemption as it was an institution which conducted an activity in the nature of business and also charged fee or consideration.

In appeal, Hon'ble High Court had held that the fundamental or dominant function of the Institute was to exercise overall control and regulate the activities of the members/enrolled chartered accountants. The Institute had framed the Chartered Accountants Regulations, 1988, and the Regulations provided for training of students, their examination, award of degrees and membership of the Institute. A very narrow view had been taken by the department that the Institute was holding coaching classes and that this amounted to business. There was a clear distinction between coaching classes conducted by private coaching institutions and the courses and examinations which were held by the Institute. Accordingly the order denying the exemption was held as invalid.

❖ Section 32 : Depreciation on Website Expenditure [Make Mytrip (India) (p) Ltd vs. DCIT - Delhi ITAT]

The assessee was engaged in the business of tour and travel and for the purpose of its business, had developed a website on which information about its business was available. The assessee claimed depreciation on website development expenses under the block of intangible assets. During the assessment proceedings it was submitted by the assessee that website was an intangible asset similar in nature to know-how, patents, copyrights, trade mark, licence and franchise. The website was owned by the assessee and was used for the purpose of business or profession. Therefore, depreciation at the rate of software was applicable. AO had disallowed the depreciation claim of the assessee by treating it as capital in nature. CIT (A) held that depreciation @ 25% is permissible, which was also affirmed by ITAT.

❖ Section 32 : Non-Compete rights are intangible asset eligible for depreciation [ACIT vs. GE Plastics India Ltd (ITAT Ahmedabad)]

Assessee had paid Rs. 4.55 crores to obtain a non-compete covenant from another company for a period of 10 years and claimed that the expenditure had resulted in an "intangible asset" u/s 32(1)(ii) on which depreciation was allowable. The AO rejected the claim and the matter ultimately goes to ITAT, where the appeal was decided in favour of the assessee. ITAT held that the AO's objection that a non-compete right is not an "intangible asset" u/s. 32(1)(ii) on the ground that (a) it is not "any other business or commercial right of a similar nature" and (b) it is not capable of transfer like other intangible assets is not acceptable because the right of absence of competition or the 'non-compete right' is an asset which is capable of being transferred and is of a similar nature as the other items referred to. This is shown by the fact that the right was transferred by the assessee at the time of its amalgamation and the expenditure resulted in the acquisition of an unrivaled and non-competed business territory for 10 years which brought advantages in the capital field.

❖ Section 37(1) : No disallowance for penalty / violation of procedural law [CIT vs. The stock and bond trading company – Bombay HC]

The assessee paid penalty/fine to BSE/NSE for infringement of procedural rules such as failure to maintain margins, trading beyond exposure limits, late submission of margin certificates, delay in making payment & deliveries etc. The AO disallowed the claim for deduction on the ground that there was an infringement of statutory law laid down by SEBI and the Explanation to s. 37(1) was attracted. High Court held as the payments made by the assessee to the Stock Exchange for violation of their regulation was not on account of an offence which is prohibited by law and accordingly the invocation of the Explanation to s. 37 of the Act was not justified.

❖ Section 37 : Education Expenses of Director [Natco Exports (p) Ltd vs. CIT Delhi HC]

Assessee-company incurred expenditure on education of one of its directors who had undergone a course at UK, and claimed deduction of same as business expenditure. She had not executed any bond that she would work for assessee after completing her studies at abroad and on failure shall return money spent. She had completed her graduation course in year 2005 and even prior to completing her graduation course she applied for further studies. HC held that education expenses of director cannot be treated as wholly & exclusively incurred for the purpose of business and hence is not allowable.

- Section 37: Value of shares allotted free of cost to employees is deductible revenue expenditure [ACIT vs. Spray Engineering Devices Ltd (ITAT Chandigarh)]

Assessee has allotted 3,94,692 Sweat Equity shares (ESOP) to its employees free of cost for rewarding them for past services. Though the shares were allotted for no consideration, the assessee accounted for the shares at Rs. 106.26 each (face value Rs. 10) at its arms length price and claimed Rs. 4.19 crores as a deduction towards "employees benefit expenses". The shares were not allotted till 31.3.2006. AO disallowed the claim on the ground that it was not an ascertained liability but was a contingent liability though the CIT (A) allowed the claim which was also affirmed by ITAT. ITAT held though the allotment of the ESOP shares was not done as of 31.3.2006, the number of shares to be allotted to the employees as on 31.3.2006 was specified and immediately thereafter the said shares were so allotted. Consequently, the mere non-allotment of the shares pending completion of certain formalities does not merit the disallowance of said expenditure as being a contingent liability.

- Section 40(b)(v): Quantification of Remuneration in partnership deed [CIT vs. Asian Marketing – Rajasthan HC)

The assessee's partnership deed provided that the partners would be paid remuneration / salary "according to the standards and norms fixed by the relevant provisions of the Income Tax Act, 1961". The AO disallowed the claim for deduction of the salary paid to the partners u/s 40(b)(v) on the ground that as the deed did not quantify the amount of remuneration. High Court held that there is no need to mention the quantification of partner's remuneration in the partnership deed.

- Section 44BB: For Calculating deemed Income u/s 44BB, service tax should be excluded from 'Gross Receipts'. DCIT vs. Mitchell Drilling International [Delhi ITAT]

The assessee offered income on gross receipts [excluding Service Tax] u/s 44BB and 10% of the same was offered for taxation. AO had rejected the contention of the assessee and added the amount of service tax in gross receipts for calculating total income. Matter travelled to ITAT.

ITAT held that, section 44BB is a special provision, treating 10% of the aggregate amount specified in sub-s. (2) of s. 44BB as deemed profits and gains of the non-resident. Service-tax is a statutory liability like custom duty and reimbursement of custom duty & service-tax paid by the assessee cannot form part of amount for the purpose of deemed profits u/s 44BB as it does not involve any element of profit. Accordingly, it cannot be included in the total receipts for determining the presumptive income. Accordingly department appeal was dismissed.

❖ Section 48: Interest paid on borrowing for acquiring house deductible u/s 24(b) & 48 [ACIT vs. C. Ramabrahmam (ITAT Chennai)]

The assessee borrowed funds for purchasing a house. The interest paid on the said loan was claimed as a deduction u/s 24(b). When the house was sold, the interest paid on the said loan was treated as "cost of acquisition" and claimed as a deduction u/s 48 in computing the capital gains. AO held that as the interest had been allowed as a deduction u/s 24(b), it could not allow again in computing capital gains. The matter travelled to ITAT and ITAT allowed the appeal in favour of the assessee by stating that deduction u/s 24(b) and computation of capital gains u/s 48 are altogether covered by different heads of income i.e., income from 'house property' and 'capital gains'. Neither of them excludes the other. A deduction u/s 24(b) is claimed when the assessee computes income from 'house property', whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48. There is no doubt that the interest in question is an expenditure in acquiring the asset. Since both provisions are altogether different, the assessee is entitled to include the interest at the time of computing capital gains u/s 48.

❖ Section 54 : Exchange of old flat with new one [Jatinder Kumar Mohan vs. ITO - Mum ITAT]

Assessee had exchanged old flat with new flat to be constructed by builder under development agreement. It claimed exemption u/s 54 in respect of capital gain on account of transfer of old flat. AO disallowed assessee's claim holding that assessee had neither purchased nor constructed house property within period prescribed u/s 54. The question rose before ITAT was (i) whether acquisition of new flat under a development agreement in exchange of old flat amounts to construction of new flat for purpose of claiming deduction u/s 54 (ii) Whether, therefore, assessee would be entitled to exemption if new flat had been constructed within a period of 3 years from date of transfer. ITAT had decided both issues in favour of the assessee.

❖ S. 54EC : Limit of Rs. 50L applies to financial year wise [Vivek Jairazbhoy vs. DCIT (ITAT Bangalore)]

In AY 2008-09, the assessee sold land on 14.12.2007 and computed capital gains of Rs. 1.57 crores. He invested Rs. 50 lakhs on 3.3.2008 (FY 2007-08) in REC Bonds and Rs. 50 lakhs on 4.6.2008 (FY 2008-09) in NHAI Bonds and claimed a deduction of Rs. 1 crore u/s 54EC. The NHAI Bonds were allotted on 30.6.2008. The AO & CIT(A) restricted the assessee's claim to Rs. 50 lakhs on the ground that (i) the Proviso to s. 54EC imposed a ceiling of Rs. 50 lakhs for the investment and (ii) the allotment of the NHAI Bonds was made beyond 6 months of the date of transfer.

ITAT had allowed the assessee by stating that s. 54EC merely restricted the investment that can be made in one FY to Rs. 50 Lakhs but it did not restrict the exemption to Rs. 50 lakhs. CBDT Circular no.3/2008 dated 12.3.2008 makes it clear that the proviso only intended to restrict the investment in a particular FY and did not intend to restrict the maximum amount of exemption permissible u/s 54EC. The fact that the Proviso uses the words "in a financial year" fortifies this interpretation. Accordingly, it has to be held that the assessee is entitled to total deduction of Rs. 1 crores in respect of the investment of Rs. 50 lakhs made in each financial year. Further ITAT held cheque was issued to NHAI before the expiry of 6 months from the date of transfer and hence compliance was duly made.

❖ Section 54EC: Non availability of eligible bonds will give extra time to assessee for compliances : CIT vs. Cello Plast (Bombay High Court)

The assessee sold factory building on 22.3.2006 and earned LTCG of Rs.49.36 lakhs. The LTCG was invested "REC Bonds" on 31.1.2007, *beyond the period of 6 months* (21.9.2006) specified in s. 54EC. The assessee claimed that the delay was due to the fact that for the period from 4.8.2006 to 22.1.2007, the *bonds were not available* and the investment was made when available. The matter ultimately travelled to High Court.

Before the High Court, the department argued that (a) even if the bonds were not available for a part of the period, they were *available* for some time in the period after the transfer (1.7.2006 to 3.8.2006) and the assessee ought to have invested then & (b) the s. 54EC bonds issued by *National Highway Authority* (NHAI) were available and the assessee could have invested in them. High Court had rejected departmental appeal by stating that contention of the department is not well founded. The assessee was entitled to wait till the last date (21.9.2006) to invest in the bonds. As of that date, the bonds were not available. The fact that they were available in an earlier period after the transfer makes no difference because the assessee right to buy the bonds upto the last date cannot be prejudiced. The department's contention that the assessee ought to have purchased the alternative s. 54EC NHAI bonds is also not well founded because if s. 54EC confers a choice investing either in the REC bonds or the NHAI bonds, the department cannot insist that the assessee ought to have invested in the NHAI bonds.

❖ Section 68: Assessee have to prove that donors have financial capacity to give gifts : [CIT vs. P.R. Ganapathy (SC)]

Hon'ble SC in this case has explained the law related to applicability of section 68. First of all the assessee have to prove that the amount received as gift(s) from the donors is actually "gift" in the legal sense. The assessee has to show whether the donors have the financial capacity to make the gift(s) in favour of the assessees. The fact that the donor's are assessed to tax outside India does not answer the question. The assessees have to lead evidence to show that the alleged donors had adequate funds in their respective accounts to make the gift(s).

❖ Section 80G: "Hinduism" is not a religion & worship of Hindu Gods is not "religious purpose" [Shiv Mandir Devsttan Panch Committee Sanstan vs. CIT (ITAT Nagpur)]

The assessee trust was set up with the object of "worship of Lord Shiva, Hanumanji, Goddess Durga and maintaining of temple" and "to celebrate festivals like Shivratri, Hanuman Jayanti, Ganesh Uttasav, Makar Sankranti". It applied for a certificate under section 80G. S. 80G (5) provides that the trust should be established for a "charitable purpose". Explanation 3 to s. 80G provides that "charitable purpose" does not include a purpose which is of a "religious nature". S. 80G(5)(iii) also stipulates that the trust should not be expressed to be for the benefit of any particular religious community or caste. CIT rejected the application on the ground that the assessee was set up for "religious" purposes. On appeal by the assessee ITAT allowed the same.

ITAT held the objects of the assessee are not for advancement, support or propagation of a particular religion. Worshipping Lord Shiva, Hanumanji, Goddess Durga and maintaining the temple is not advancement, support or propagation of a particular religion. Lord Shiva, Hanumanji & Goddess Durga do not represent any particular religion. They are merely regarded to be the super power of the universe. Hinduism is a way of life. It consists of a number of communities having different gods who are being worshipped in a different manner, different rituals, different ethical codes. The worship of god is not essential for a person who has adopted Hinduism way of life. Therefore, expenses incurred for worshipping of Lord Shiva, Hanuman, Goddess Durga and for maintenance of temple cannot be regarded to be for religious purpose.

❖ Section 143(3) : Assessment order without the signature of AO is void [M/s Vijay Corporation vs. ITO : ITAT Mumbai)

AO passed an assessment order u/s 143(3) and issued the Income-tax Computation Form (ITNS 150), Demand Notice u/s 156 and Penalty Notice u/s 271(1)(c). While all the other documents were signed by the AO, the assessment order was not signed. In reply to the assessee's contention that the assessment order was invalid, ITAT held that if the assessment order is not signed, then the fact that he has signed the tax computation form and the notice of demand is irrelevant. The omission to sign the assessment order cannot be explained by relying on s. 292B.

❖ Section 147 : Reopening on the basis of retrospective amendment is invalid [Ganesh Housing Corporation Ltd. vs. DCIT – Gujarat HC]

For AY 2006-07, the assessee claimed s. 80-IB (10) deduction of Rs. 11.38 crores which was accepted by the AO while passing order u/s 143(3). Subsequently, within 4 years from the end of the AY, the AO reopened the assessment u/s 148 on the ground that the assessee had not complied with s. 80-IB(10) including that after the insertion of the Explanation to s. 80-IB(10) by the FA (No. 2) Act 2009 w.r.e.f. 1.4.2000, a contractor was not eligible for deduction u/s 80-IB(10). The assessee challenged the s.148 notice by a Writ Petition. High Court by allowing the WP held that as regards the retrospective amendment, if an Explanation is added to a section for the removal of doubts, the implication is that the law was the same from the very beginning and the same is further explained by way of addition of the Explanation. It is not a case of introduction of a new provision of law by retrospective operation. As regards the formation of opinion, the assessee had disclosed all the material relevant for claiming s. 80-IB(10) deduction and there was no suppression of material.

❖ S. 147: Reopening in the absence of "fresh tangible material" is invalid [CIT vs. Amitabh Bachchan (Bombay HC)]

Assessee, a famous Bollywood Actor, filed ROI declaring income of Rs. 14.99 crores. A revised ROI was then filed claiming 30% ad-hoc expenses (Rs. 6.31 crores) and offering income of Rs. 8.11 crores. When the AO asked the assessee to substantiate the expenses, he withdrew the claim. The AO passed order u/s 143(3). The AO then issued a s. 148 notice (within 4 years) to reopen the assessment on the ground that the claim for expenses (which was withdrawn) had to be assessed as "unexplained expenditure" u/s 69. The CIT (A) & Tribunal struck down the reassessment order on the ground that the material on the basis of which the assessment was sought to be reopened was always available at the time of the original proceeding and there was no new material.

Subsequently High Court had dismissed the departmental appeal by stating that the reopening on the basis that the said adhoc expenditure constituted "unexplained expenditure" u/s 69 was based on the same material. There was no fresh tangible material before the AO to reach a reasonable belief that the income liable to tax has escaped assessment. It is a settled position of law that review under the garb of reassessment is not permissible.

❖ S. 147 : Reopening based solely on departmental audit objection is void [ICICI Home Finance Co. Ltd vs. ACIT (Bombay HC)]

For AY 2006-07, the AO passed an assessment order. Departmental audit raised an objection that the AO had wrongly allowed the assessee's claim on several items. Based on this objection, AO had reopened the assessment within 4 years from the end of the assessment year. The assessee challenged the reopening on the ground that (a) it was based on the audit objection and without independent application of the AO's mind & (ii) all the facts were already on record, there was no new material and it was a case of "change of opinion".

High Court had quashed the order by stating that belief u/s 147 that income has escaped assessment has to be the reasonable belief of the AO himself and cannot be an opinion and/or belief of some other authority. The AO cannot blindly follow the opinion of an audit authority for the purpose of arriving at a belief that income has escaped assessment. Further, though the power to reopen an assessment within 4 years is very wide, yet there must be "tangible material" to justify the reopening and it cannot be based on a "review". Once all the material with regard to particular issue is before the AO and he chooses not to deal with the same, it cannot be said that he had not applied his mind to all the material before him.

❖ Section 206AA : Not applicable to assessee having no taxable income [A Kowsalya Bai vs. UOI – Kar HC]

The assessee, whose income was below taxable limit, filed Form 15G and requested that no TDS be deducted on the interest on fixed deposit. However, she was informed that in view of s. 206AA inserted by FA 2009, TDS would have to be deducted in the absence of PAN. The assessee filed a writ petition to challenge s. 206AA as being arbitrary and unconstitutional to the extent that it compelled persons with no taxable income to obtain a PAN.

High Court held - "*U/s 139A, only persons whose income is chargeable to tax are required to obtain a PAN. However, s. 206AA compels even persons without a taxable income to obtain a PAN to avoid TDS. This creates difficulty for poor and illiterate persons who make small investments and discourages them to invest money. S. 206AA runs counter to s. 139A and is discriminatory. Accordingly, s.206AA is read down as being inapplicable to persons whose income is less than the taxable limit.*"

- Section u/s 234A to 234C : Interest is mandatory & can be levied even if assessment order is silent [Karanvir Singh Gossal vs. CIT (SC)

Supreme Court in this case explains that interest u/s 234A to 234C is mandatory and interest under Section 234B/234C is mandatory in nature and there is no need for the AO to specifically recite in the assessment order that the said interest shall be levied.

- Section 245 : Mere filing of Return of Income makes an advance ruling application void: [Netapp BV vs. The AAR (Delhi High Court)]

For AY 2009-10, the assessee filed a return on income u/s 139(1) on 31.3.2010. On 17.06.2010, it filed an application before the AAR seeking a ruling in respect of the transactions that had been entered into in that year. The AAR rejected the application on the ground that as the assessee had filed a ROI, the questions raised in the application were "already pending" before an income-tax authority and so the application was not maintainable. The assessee filed a Writ petition contending that (a) the mere filing of a ROI did not mean that all possible questions were "pending" if the AO had not raised the issue and (b) as the AAR had in the past admitted applications even though ROIs were filed, it could not change its stand.

High Court had dismissed the Petition by stating that the crux of s. 245R(2) is that if the applicant wishes to plan its affairs and transactions in advance, it is free to do but once it proceeds to file a return, the AAR's jurisdiction to entertain the application for advance ruling is taken away, because the AO would then be seized of the matter, and would possess a multitude of statutory powers to examine and rule on the return. The fact that in the past the AAR followed a different practice in the past is irrelevant because there is no estoppel against a statute.

- Section 260A: A Retrospective Amendment does not affect the completed matters : J.B. Roy vs. DCIT (Allahabad HC)

The assessee filed a belated appeal to the High Court u/s 260A which was dismissed by the HC stating that it had no power to condone delay in filing the appeal. Finance Act 2010 had made an amendment in section 260-A (2A) [w.r.e.f. 01.10.1998] which gives High Court the power to condone delay. Pursuant to the said retrospective amendment, the assessee filed a review petition and requested that its appeal mat be restored. HC had dismissed the review petition by stating that prospective declaration of law is a devise innovated by the courts to avoid reopening of settled issues and to prevent multiplicity of proceedings. On the date when the appeal was dismissed on the ground of limitation, there was no discretion with the court to condone the delay. The amendment introduced in s. 260-A(2A) has the effect only on pending and future cases.

❖ Section u/s 271(1)(c): Penalty cannot be imposed for a "bona fide human error" [PWC vs. CIT (SC)] **Imp.**

The assessee filed a ROI together with the Tax Audit Report. In the Tax Audit Report, it was *disclosed* that an amount of Rs. 23 lakhs towards provision for gratuity was *not allowable* u/s 40A(7). However, in the computation of income, the said amount was not disallowed. The AO also overlooked the item and omitted to make a disallowance. Subsequently, he reopened the assessment u/s 147, disallowed the expenditure and levied penalty u/s 271(1)(c). The assessee explained that the omission to make a disallowance had occurred because it had a separate accounts department and there was "*some confusion*" and that the return was prepared by a *non-CA* and was signed a director who proceeded on the basis that the return was correctly drawn up. The CIT (A), Tribunal and High Court affirmed the levy of penalty on the ground that since the assessee was a well known and reputed Chartered Accountant firm and a tax consultant**,** it was not expected to make such a mistake and that there had been a failure to discharge the strict liability to furnish true and correct particulars of income.

On appeal, Supreme Court deleted the penalty by observing that though the assessee is undoubtedly a reputed firm and has great expertise available with it, it is possible that even the assessee could make a "silly" mistake**.** All that happened in the present case is that through a bona fide and inadvertent error failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. Consequently, given the peculiar facts of this case, the imposition of penalty on the assessee is not justified.

❖ Section 271(1)(c) : No penalty u/s 271(1)(c) if tax payable under MAT [CIT vs. Nalwa Sons Investment Ltd – Supreme Court) **Very Important**

For AY 2001-02, the assessee filed a ROI declaring loss of Rs. 43.47 crores under the normal provisions of the Act and book profits of Rs. 3.86 crores u/s 115JB. The AO assessed a loss at Rs. 36.95 crores as per normal provisions and book profits at Rs.4.01 crores. As there was a reduction in the loss under the normal provisions owing to various additions and disallowances, the AO levied penalty u/s 271(1)(c)

Before the High Court, the assessee argued that even if there was a concealment u/s 271(1)(c) with respect to the normal assessment, the same was not relevant because the assessee's income was assessed u/s 115JB. HC accepted the plea and held that as the s. 115JB "book profits" were by a legal fiction deemed to be the "total income", the furnishing of wrong particulars had no effect on "the amount of tax sought to be evaded" as defined in Explanation 4 to s. 271(1)(c). On appeal by the department to the Supreme Court dismissed the departmental appeal.

❖ Section 271(1)(c) : CA's opinion will not make the claim genuine [Chadha Sugars (p) Ltd vs. ACIT – ITAT Delhi)

Assessee obtained the opinion of a Chartered Accountant on whether expenditure on fees to the Registrar of Companies for increasing authorized capital can be claimed as revenue expenditure. The CA relied on judicial precedents and opined that the issue was debatable and a claim could be made on the basis that if two views were possible, the view in favour of the assessee should be taken. The assessee claimed deduction and even the tax auditor did not qualify the same. The claim of the assessee was rejected by AO and levied penalty u/s 271(1)(c), which was confirmed by CIT (A). ITAT had confirmed the penalty u/s 271(1)(c) by stating that opinion of CA's does not make claim bonafide one.

❖ Section 271(1)(c) : No Penalty for disallowance u/s 40(a)(ia) [ACIT vs. Mazda Ltd Ahmadabad ITAT]

AO had made certain disallowance u/s 40(a)(ia) for non deduction of Tax at source. Further, penalty u/s 271(1)(c) had been imposed. ITAT held Penalty u/s 271(1)(c) cannot be imposed on additions made by making a disallowance u/s 40(a)(ia) for non deduction of TDS.

❖ Section 271AAA: Waiver of Penalty [CIT vs. Pioneer Marbles & Interiors (p) Ltd – ITAT Kolkata]

Pursuant to a search u/s 132 the assessee disclosed additional income u/s 132(4) and offered the same to tax. However, the taxes due on the same were paid only after the passing of the assessment order. The AO held that as the taxes were not paid at the time of filing the ROI, the immunity from penalty u/s 271AAA was not available. This was reversed by the CIT (A). On appeal by the department, HELD dismissing the appeal by stating that while payment of taxes & interest is a condition precedent for availing immunity u/s 271AAA(2), there is no time limit for such payment. As there is no such requirement in s. 271 AAA, there is no outer limit for payment of the due tax & interest.

Note: For Full texts of the decisions as well as any queries Feel free to contact at "bikashbogi@yahoo.co.in" / + 91-9930934403 / or visit us at www.sbrca.in

Disclaimer: Please go through the full text of the cases before applying in practical situations.

Success is not the matter of being the BEST & WINNING the race: Success is a matter of HANDLING the WORST & FINISHING the Race.