

Penalties

Some Key Points : Recent Amendments

- (a) Higher penalty of ₹ 500 per day of continuing default for failure to furnish Annual Information Return in response to notice under section 285BA(5) [New section 271FA]
- (b) Penal provisions on undisclosed income found during the course of search made more stringent [Section 271AAB]
 - (i) At present, penalty is leviable @10% of undisclosed income under section 271AAA, if the undisclosed income relates to -
 - (1) the previous year which has ended before the date of search, but the due date of filing return has not expired before the date of search and the return has not been furnished; or,
 - (2) the previous year in which search is conducted.However, no penalty is leviable if the assessee admits the undisclosed income in a statement under section 132(4) recorded in the course of search and specifies the manner in which such income has been earned and pays the tax together with interest, if any, in respect of such income.
 - (ii) Consequently, undisclosed income (for the current year in which search takes place or the previous year which has ended before the search and for which the due date of filing of return has not expired and the return is yet to be filed) found during the course of search attracts no penalty if such undisclosed income is admitted in the course of search and penalty@10%, if such undisclosed income is not admitted in the course of search.
 - (iii) In order to deter the practice of concealing income, the penal provisions have been made more stringent by insertion of new section 271AAB which provides for levy of penalty on undisclosed income found during the course of a search, which has been initiated on or after 1st July, 2012, which relates to specified previous year, i.e. -
 - (1) the previous year which has ended before the date of search, but the due date of filing return of income for the same has not expired before the date of search and the return has not yet been furnished;
 - (2) the previous year in which search is conducted.
 - (iv) Accordingly, under new section 271AAB,
 - (1) penalty@10% would be attracted, if undisclosed income is admitted during the

course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 153A expires, as the case may be) and furnishes the return of income for the specified previous year declaring such undisclosed income.

- (2) If undisclosed income relating to the specified previous year is not admitted during the course of search in the statement furnished under section 132(4) but the same is disclosed in the return of income filed after the date of search and the tax along with the interest, if any, is paid before the specified date, then, the taxpayer will be liable for penalty@20% of undisclosed income.
 - (3) In all other cases, penalty ranging from 30% to 90% of undisclosed income would be attracted.
- (v) Undisclosed income, for the purpose of this section, means:
- (1) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has-
 - (a) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or
 - (b) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or
 - (2) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.
- (vi) No penalty under section 271(1)(c) is leviable in respect of such undisclosed income.
- (vii) Further, the provisions of section 271AAA would not be applicable where search is initiated under section 132 on or after 1st July, 2012.
- (viii) An order imposing penalty under section 271AAB would be appealable under section 246A before the Commissioner (Appeals).
- (ix) Section 274 providing for the procedure for imposing penalties and section 275 providing for a bar of limitation for imposing penalties, shall, to the extent relevant apply to penalty under section 271AAB.

(c) Penalty provisions to apply to specified domestic transactions as they apply to an international transaction [Sections 271, 271AA, 271BA & 271G]

The penalty provisions under section 271, 271AA, 271BA and 271G shall apply to the specified domestic transaction as they apply to an international transaction defined under section 92B.

Accordingly, the amount added or disallowed in computing total income under section 92C(4) in the case of an assessee who has entered into a specified domestic transaction shall be deemed to represent concealed income and penalty under section 271(1)(c) ranging between 100% to 300% of the amount of tax sought to be evaded would be attracted.

Failure to furnish the report under section 92E from an accountant would attract penalty of ₹ 1,00,000 under section 271BA.

In addition,

- (i) in case of failure to keep and maintain information, document as required under section 92D(1) or 92D(2); or
- (ii) failure to report such specified domestic transaction which is required to be reported; or
- (iii) maintain or furnishes incorrect information or document,

penalty under section 271AA @ 2% of the value of each transaction would be attracted.

Penalty@2% of value of specified domestic transaction would be attracted under section 271G for failure to furnish the prescribed information or document as required under section 92D(3) within the period of 30 days from the date of receipt of notice or the extended period not exceeding another 30 days, as the case may be.

(d) Stringent penal provisions for delay in furnishing of TDS/TCS statements and/or for furnishing incorrect information in TDS/TCS statements [Sections 234E, 271H, 272A & 273B]

In order to deter delay in furnishing of TDS/TCS statement and/or furnishing incorrect information in the TDS/TCS statement, the penal provisions have now been made more stringent –

- (a) A fee of ₹ 200 for every day would be levied under new section 234E for late furnishing of TDS/TCS statement from the due date of furnishing of TDS/TCS statement to the date of furnishing of TDS/TCS statement. However, the total amount of fee shall not exceed the total amount of tax deductible/collectible and such fee has to be paid before delivering the TDS/TCS statement. Such fees would be attracted in respect of tax deducted or collected at source on or after 01.07.2012.
- (b) In addition to said fee, a penalty ranging from a minimum of ₹ 10,000 to a maximum of ₹ 1,00,000 shall also be levied under new section 271H for not furnishing TDS/TCS statement within the prescribed time or furnishing incorrect information in the said

statements in respect of tax deducted or collected at source on or after 01.07.2012. Consequently, with effect from 1.7.2012, penalty shall not be leviable under section 272A in respect of such failure.

Question 1

“A penalty for concealment can be imposed even in the case where the claim of the assessee is debatable or arguable”.

Answer

The Rajasthan High Court, in the case of *CIT vs. Harshvardhan Chemicals & Minerals Ltd. (2003) 259 ITR 212* and Punjab and Haryana court in the case of *Indersons Leather P. Ltd. (2010) 328 ITR 167*, has held that if the claim of a deduction or an expenditure is either debatable or controversial or even arguable, in such cases, it cannot be said that the assessee has concealed any income or has furnished inaccurate particulars of its income with the intention of evasion of tax and hence, penalty cannot be levied under section 271(1)(c).

Question 2

The Assessing Officer has served a notice proposing to levy penalty under section 271(1)(c) of the Income-tax Act, 1961, as the variation of income assessed to income returned and also the tax effect was more than thirty percent. The addition arose consequent to the disallowance of claim of assessee relating to certain exemption. The assessee wants to reply to the effect that there was no mens rea or conscious act of concealment on his part and that the claim made was bonafide, the levy of penalty under section 271(1)(c) is not valid. You are requested to help the assessee in this regard in drafting a suitable reply.

Answer

The Supreme Court, in the case of *Union of India v. Dharmendra Textile Processors (2007) 295 ITR 244*, observed that the object behind the enactment of section 271(1)(c) read with the *Explanations* is to provide a remedy for loss of revenue. The penalty under that provision is a civil liability. The Supreme Court held that in cases related to imposition of penalty under section 271(1)(c), wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C.

Therefore, 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 penalty had before him and if that record can sustain the finding that there has been concealment, that would be sufficient to sustain the penalty. Hence, there is no need for the revenue to prove that concealment was done by the assessee 'willfully' in order to impose penalty under section 271(1)(c).

Hence, it will not help the assessee to raise defence on the lines that there was no *mens rea*.

However, every addition to the income returned does not warrant levy of concealment penalty under section 271(1)(c). The addition should be consequent to an act of concealment or withholding a fact or furnishing of inaccurate particulars of income. Where the assessee has

furnished all particulars and has claimed an exemption on an honest belief that he is entitled to the same, merely because the exemption is not allowable does not warrant levy of penalty under section 271(1)(c). This has been held so, in a number of decisions. In *CIT v. Reliance Petroproducts (P) Ltd.* (2010) 322 ITR 158 (SC), it was held that merely making an incorrect claim which is not sustainable in law, by itself, cannot tantamount to furnishing inaccurate particulars regarding the income of the assessee.

The reply should be prepared on the above lines.

Question 3

Sumit voluntarily filed a revised return of income within the prescribed time limit after discovering that interest received from bank was not disclosed in the original return. Can he be absolved of penalty under section 271(1)(c)?

Answer

On this issue, the Gujarat High Court, in *CIT v. Manibhai & Brothers* (2007) 294 ITR 501 (Guj.), observed that for imposition of penalty under section 271(1)(c), there should be a deliberate concealment of particulars or furnishing of inaccurate particulars by the assessee. For this purpose, the conduct of the assessee from the beginning till the end of the assessment proceedings in totality should be considered. If a revised return of income is filed by the assessee after the omission or wrong statement in the original return is discovered by the Assessing Officer in the course of assessment proceedings, then the Assessing Officer can impose penalty under section 271(1)(c). However, if the assessee voluntarily files a revised return of income, *suo moto*, before the assessment order is passed, after he himself discovers an omission or wrong statement in the original return, then, penalty cannot be levied under section 271(1)(c).

In view of above legal position, Sumit can be absolved of penalty under section 271(1)(c), since he has filed the revised return under section 139(5), *suo moto*, within the prescribed time limit.

Question 4

A notice to levy penalty under section 271(1)(c) was issued on 11.6.2013. The assessee in response thereto filed on 13.7.2013 a written submission requesting to decide the matter. The Assessing Officer before whom this reply was filed retired on 31.8.2013 and the officer, who succeeded him passed the penalty order without providing any further opportunity, but by taking into cognizance the reply filed by the assessee. Whether the order passed by the Assessing Officer is valid?

Answer

As per the provisions of section 129, whenever an Assessing Officer ceases to exercise jurisdiction and he is succeeded by another, then, the authority so succeeding may continue the proceedings from the stage at which the proceedings were left by the predecessor provided the assessee does not demand that before the proceeding is so continued he may be re-heard by the successor officer. In the present case, the assessee had only filed a written

submission in respect of the notice for levy of penalty. However, he had not specifically requested to be reheard at the time of change in office. Accordingly, the penalty order passed by the successor officer without providing any further opportunity to be reheard, is a valid order. This was also held by the Apex Court in the case of *Pradip Lamp Works v. CIT (2001) 249 ITR 797*.

Question 5

What is the quantum of penalty that could be levied in each of the following cases -

- (i) *Failure to get books of accounts audited as required under section 44AB within the time prescribed under the Act.*
- (ii) *Failure to get books of accounts audited in response to the notice issued under section 142(2A).*
- (iii) *Failure to furnish audit report as required under section 92E.*

Answer

The penalty that could be levied in each case is:-

- (i) Failure to get books of accounts audited as required under section 44AB of the Income-tax Act, 1961 - a sum equal to $\frac{1}{2}\%$ of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years, or a sum of ₹ 1,50,000, whichever is less [Section 271B].
- (ii) Failure to get books of accounts audited in response to the notice issued under section 142(2A) – a sum of ₹ 10,000 [Section 271(1)].
- (iii) Failure to furnish audit report under section 92E - a sum of ₹ 1,00,000 [Section 271BA].

Question 6

The assessment of B, an individual, for the assessment year 2012-13 was made under section 143(3) of the Income-tax Act, 1961 on 18.3.2013 and the penalty under section 271(1)(c) was initiated. The assessment has become final and is not the subject-matter of an appeal or revision. The Assessing Officer issued a show cause notice for levy of penalty under section 271(1)(c) to B on 25.3.2013. B furnished a reply to the said notice on 30.3.2013. There was a change in incumbent and the Assessing Officer, who made the assessment and issued the show cause notice, was succeeded by another. The successor-Assessing Officer, suo motu, issued a notice under section 129 to B on 20.9.2013. B did not respond to the said notice. The successor-Assessing Officer passed an order on 24.10.2013 levying penalty under section 271(1)(c). Examine the validity of the order of penalty passed with reference to the aspect of limitation.

Answer

Section 275(1) provides for the time limit for passing an order of penalty. Clause (c) thereof requires that the order of penalty should be passed before the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been

initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The time limit in this case, as per section 275(1)(c), is 30.9.2013. *Explanation* to section 275(2) states that in computing the period of limitation, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129 shall be excluded. A plain reading of the proviso to section 129 indicates that it is the assessee who may demand to be re-heard before any order is passed against him. In the instant case, notice under section 129 was not issued by the successor-Assessing Officer at the instance of B. B did not request him to provide an opportunity of re-hearing. The Supreme Court has in *Pradip Lamps Works v. CIT (2001) 249 ITR 797* ruled that where the assessee replied to the show cause notice issued by the predecessor-Assessing Officer, the successor-Assessing Officer can levy penalty without giving a fresh notice of hearing to the assessee in the absence of a demand by the assessee for re-hearing. The Karnataka High Court, in *B. N. Amarnath v. CIT (2003) 259 ITR 590*, held that the *Explanation* to section 275(2) could not be invoked by the Department unilaterally to compute the period of limitation on its own, by issue of notice under section 129, without there being any request for re-hearing by the assessee.

Therefore, in this case, the order of penalty should have, therefore, been passed by the successor-Assessing Officer on or before 30.9.2013 as per the provisions of section 275(1)(c). The order of penalty having been passed on 24.10.2013 is barred by limitation and therefore, invalid.

Question 7

X, an individual whose total sales in the business of food grains for the year ending 31.3.2014 was ₹105 lacs, did not maintain books of account. The Assessing Officer levied penalty under section 271A for non-maintenance of books of account and section 271B for not getting the books audited as required by section 44AB. Is the Assessing Officer justified in levying penalty under section 271B?

Answer

X is required to maintain books of account as per section 44AA and get them audited under section 44AB, since his gross sales exceeded ₹ 1 crore. He is liable to pay penalty under section 271A for not maintaining his books of account as per section 44AA. Accordingly, the action of the Assessing Officer in levying penalty under section 271A is correct. However, where books of account have not been maintained, there cannot be a question of getting them audited. Audit of books of account presupposes maintenance of books of account. When admittedly X has not maintained books, he cannot obviously get the audit done.

In *Surajmal Parsuram Todi v. CIT (1996) 222 ITR 691*, the Gauhati High Court has held that when a person commits an offence by not maintaining books of accounts as contemplated by section 44AA, the offence is complete and after that there can be no possibility of any offence as contemplated by section 44AB and, therefore, the imposition of penalty under section 271B is erroneous.

Therefore, in this case, the Assessing Officer is not justified in levying penalty under section 271B.

Question 8

GK Ltd. filed its return of income for the assessment year 2012-13 on 30.3.2014. The whole tax payable was already deducted at source. The Assessing Officer levied a penalty of ₹5,000 under section 271F. The assessee makes a submission to the CIT (Appeals) that he has furnished the return of income within the due date specified in section 139(4) and hence no penalty should be levied under 271F. Discuss.

Answer

Penalty of ₹ 5,000 under section 271F is imposable on a person who is required to furnish return of income under section 139(1) for failure to furnish such return before the end of the relevant assessment year, i.e. A.Y. 2012-13 in this case. It is true that the assessee can file a belated return under section 139(4) within one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier. However, right to file a belated return after the end of the assessment year does not mean that the liability to pay penalty ceases. The Supreme Court's decision in *Pradip Lamps Works vs. CIT (2001) 249 ITR 797* supports this view. Hence, the assessee is liable for penalty under section 271F for late filing of the return.

Question 9

State the conditions, if any, to be satisfied by an assessee in order to get relief under section 273A(4) regarding the waiver of penalty. Can the Commissioner refuse to grant relief, when the conditions laid down in the section was complied with, by the assessee?

Answer

There are two conditions to be satisfied by an assessee in order to get relief in the form of a waiver or reduction of penalty by the Commissioner of Income-tax under section 273A(4) of the Act. These conditions are:

- (i) The payment of penalty would cause "genuine hardship" to the assessee and the Commissioner is satisfied about the existence of genuine hardship having regard to the circumstances of the case. The existence of genuine hardship would entitle the assessee to relief. The CBDT in its *Circular No 784 dated 22-11-99* has clarified that genuine hardship should exist both at the time of making the application and at the time the Commissioner passes the order under section 273A(4) of the Act.
- (ii) The assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

As per the decision of Andhra Pradesh High Court in *K.S.N. Murthy v. Chairman, CBDT (2001) 119 Taxman 310*, if the above two conditions are satisfied, the Commissioner has no discretion to refuse to exercise his powers. In case the quantum of penalty exceeds ₹ 1 Lac

the Commissioner cannot grant relief without the previous approval of the Chief Commissioner or the Director General, as the case may be.

Question 10

KP Madhusudan & Co., a partnership firm, had taken certain bank drafts for payments to suppliers of rice and it had made entries in the accounts a few days later, but not on the dates on which the bank drafts were obtained. The explanation of the assessee was that since sufficient cash balance was not available on those dates, it had obtained hand loans from friends and, as it had expected to repay such loans within a short time, no entries were made in its books of account in respect thereof. Due to inability to furnish evidence for such loans, the assessee offered the amount of ₹ 93,000 as additional income towards unexplained investment. Penalty proceedings were initiated by Assessing Officer under section 271(1)(c) read with Explanation 1(B) of Income-tax Act, 1961 and levied a penalty of ₹ 37,975. Is the levy of penalty justifiable?

Answer

Clause (B) of *Explanation 1* to section 271(1)(c) says that when an assessee offers an explanation which he is not able to substantiate and fails to prove such explanation is bona fide, then the amount added or disallowed in computing the total income of such person as a result thereof shall be deemed to represent the income in respect of which particulars have been concealed. However, nothing contained in the *Explanation* shall be applicable to a case referred to in clause (B) in respect of any amount added or disallowed as a result of the rejection of any explanation offered by such person, if such explanation is bona fide and all the facts relating to the same and material to the computation of his total income have been disclosed by him.

In this legal background, as the firm was unable to produce evidence for the loans, it had offered ₹ 93,000 as additional income and paid the taxes. In the circumstances, the case clearly falls within the jurisdiction of *Explanation 1(B)* and hence, the levy of penalty is justified. [*K.P. Madhusudan vs. CIT (2001) 251 ITR 99 (SC)*].

Question 11

An appeal against an assessment order for Assessment Year 2003-04 is decided by the Income-tax Appellate Tribunal against the assessee and the order is served on the Commissioner on 27.12.2013. The Assessing Officer levies penalty under section 271(1)(c) of the Income-tax Act, 1961 vide his order dated 27.6.2014 for the aforesaid Assessment Year for which the appeal has been decided against the assessee. The assessee seeks your advice on the following:

- (i) *Is the Assessing Officer empowered under the Act to impose penalty after a period of ten years?*
- (ii) *What remedial action can be taken against the order and what is the prescribed time limit thereof?*

Answer

- (i) The penalty imposed under section 271(1)(c) is to be examined with reference to the provisions of limitation in section 275(1)(a) which states that in calculating the period of limitation for imposition of penalty, the time taken in deciding the order by the Appellate Authorities shall be excluded. A penalty can be imposed within a period of 6 months from the end of the month in which the order was received by Commissioner of Income-tax. In the present case the order of penalty is within the time limit and therefore, a correct order.
- (ii) The remedy available to the assessee against the order of penalty is to present an appeal under section 246A before Commissioner of Income-tax (Appeals) within 30 days from the date of receipt of the penalty order as the same is an appellable order under section 246A(1)(j).

Question 12

An assessee had credited a sum of ₹ 50,000 in cash in the account of Madan, said to represent a loan obtained from him. The Assessing Officer, having gone into the genuineness of the transaction, disbelieved the story of loan and treated the sum of ₹ 50,000 as the income of the assessee from undisclosed sources. He also started proceedings under section 271D and levied a penalty of ₹ 60,000 on the assessee for having accepted the loan in contravention of section 269SS. Examine the correctness of the levy.

Answer

There are several flaws in the penalty levied by the Assessing Officer. Firstly, the penalty leviable under section 271D cannot exceed the sum equal to the loan taken. Hence, the maximum penalty leviable would be ₹ 50,000. Secondly, any penalty imposable under section 271D shall be imposed by the Joint Commissioner. Hence, unless the Assessing officer happens to be a Joint Commissioner the levy of penalty will be invalid. Thirdly, the Assessing Officer cannot, on the one hand, treat the loan as undisclosed income of the assessee and on the other, treat it as a loan for the purpose of section 269SS read with section 271D. Such a treatment will be self contradictory. The moment the amount of ₹ 50,000 is treated as undisclosed income, it ceases to bear the character of loan and therefore, the foundation for the levy of penalty under section 271D disappears. [*Diwan Enterprises v. CIT and Others* 246 ITR 571].

Question 13

Anurag Traders, a partnership firm, for the assessment year 2012-13, filed its return of income disclosing an income of ₹ 40,000. The assessment was completed on an income of ₹ 1,20,000 in the month of June, 2013. The additions included (a) profit on suppressed sales of ₹ 40,000, (b) disallowance of expenses ₹ 40,000. The assessment became final as no appeal was preferred. Penalty proceedings were initiated on the charge of concealment of income of suppressed profits. After considering the explanation to the notice to the penalty,

penalty was levied on the charge that inaccurate particulars were furnished. M/s. Anurag Traders contends that the order of penalty is bad in law. Is the contention justified?

Answer

In the given facts of the case, the Assessing Officer has issued notice towards concealment of income in terms of suppression of sales. However, penalty was levied on the charge of furnishing of inaccurate particulars of income. Therefore, the penalty order is bad in law.

The Gujarat High Court had the occasion to consider a similar issue in the case of *A.M. Shah & Co v. CIT (1999) 238 ITR 415*. The High Court held that the charge and the levy of penalty should be for the same reason i.e., the basis for issue of notice and for imposition of penalty should be the same. In this case, penalty proceedings were initiated on the charge of concealment of income. However, the penalty was finally levied on the ground that the assessee has furnished inaccurate particulars. Such change of stand for imposition of penalty is not valid in law.

Question 14

Examine the following cases and state whether the same are liable for penalty as per the provisions of the Income-tax Act, 1961.

- (i) *Raman & Associates had made payment in excess of the limits prescribed to the contractors for carrying out labour job work at various sites, but had not deducted tax at source as per section 194C.*
- (ii) *Hotels and Hotels were asked by Income-tax Officer (CIB) to furnish details of all such tourists who stayed in their hotels and had paid bill amount in excess of ₹ 10,000. They have not furnished the requisite information in spite of various reminders.*

Answer

- (i) Penalty under section 271C is attracted for failure to deduct tax at source. The penalty would be a sum equal to the amount of tax which such person has failed to deduct. Such penalty can be imposed only by the Joint Commissioner. Therefore, Raman & Associates shall be liable for penalty under section 271C equal to the amount of tax which they have failed to deduct under section 194C from the payments made to the contractors.
- (ii) Section 133(6) empowers the Income-tax authority to require any person to furnish information in relation to such points or matters which will be useful for or relevant to any enquiry or proceeding under the Act. Failure on the part of an assessee to furnish the information in relation to such points or matters as required makes him liable for penalty under section 272A(2) of ₹ 100 for every day during which the failure continues.

Note – In a case where no proceeding is pending, the Income-tax authority can exercise this power only after obtaining the approval of the Director or Commissioner, as the case may be. In this case, it is presumed that the Income-tax authority has obtained the approval of the Director or Commissioner before exercising this power.

Question 15

The Assessing Officer completed the assessment of X. Limited for the assessment year 2010-11 under section 143(3) on 30th December, 2012. The Assessing Officer has initiated the proceeding for penalty under section 271(1)(c) on 30th December, 2012. What is the time limit for imposition of such penalty in the following cases?

- (i) X. Limited did not contest the assessment order.*
- (ii) X. Limited contested the assessment order by filing appeal to the Commissioner (Appeals). The appeal was dismissed on 30th December, 2013, on which date the Commissioner received the appeal order.*
- (iii) The jurisdictional High Court stayed the penalty proceeding on 25th June, 2013 and the Supreme Court vacated the stay on 25th November, 2013.*

Answer

Section 275(1) provides for the time limit for imposing penalty. According to this section, the time limit for imposition of penalty under section 271(1)(c) in the following cases would be :

- (i) If X. Limited did not contest the assessment order**

Where the relevant assessment order is not the subject matter of either appeal or revision, an order imposing penalty shall not be passed -

- (i) after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, i.e. 31st March, 2013, or
- (ii) six months from the end of the month in which action for imposition of penalty is initiated, i.e. 30th June, 2013,

whichever is later.

Therefore, the time limit for imposing penalty in this case would be 30th June, 2013.

- (ii) If X. Limited made an appeal to the Commissioner (Appeals) against the assessment order and the appeal was dismissed on 30th December, 2013, on which date the Commissioner received the appeal order**

Where the assessment order or other order is the subject matter of an appeal to the Commissioner (Appeals) under section 246A, and the Commissioner (Appeals) passes the order disposing of such appeal, an order imposing penalty shall be passed –

- (a) before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed i.e. 31st March, 2013 or

- (b) within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Chief Commissioner or Commissioner i.e. 31st March, 2015,

whichever is later.

Therefore, the time limit for imposing penalty in this case would be 31st March, 2015.

- (iii) If the penalty proceeding is stayed by the High Court on 25th June, 2013 and the stay is vacated by the Supreme Court on 25th November, 2013.

As per the provisions of the *Explanation* below section 275(2), the period of stay is to be excluded from the time limit for imposition of penalty. In this case, the time limit for imposing penalty would expire on 30th June, 2013, being the date of expiry of six months from the end of the month in which action for imposition of penalty is initiated (since it is later than 31.3.2013, being the date of expiry of the financial year in which the assessment proceedings are completed). The stay order was passed by the High Court on 25th June, 2013 and vacated by the Supreme Court on 25th November, 2013. The time limit for imposing penalty will, accordingly, get extended to 30th November, 2013.

Question 16

X and Y are partners of a partnership firm. The Assessing Officer of X is of the opinion that the income returned by X is actually taxable in the hands of Y.

The Assessing Officer, in order to safeguard the interest of the Revenue, assessed the income in the hands of both X and Y. The Assessing Officer recovered the tax due on the same from X and Y. He also imposed penalty under section 271(1)(c) on Y for concealing the same. Comment on the actions of the Assessing Officer.

Answer

When the ownership of the income is in dispute or is a matter of doubt, it is open to the Assessing Officer to assess a particular income in the case of the person who is considered as liable to tax and include the same income in the case of another person also as a protective measure. Such an assessment is known as protective assessment.

It must, however, be noted that while protective assessment is permissible, a protective order for recovery is not permissible. In making a protective assessment, the authorities are merely making an assessment and leaving it as a paper assessment until the matter is decided one way or another, in further proceedings like appeal or revision.

Furthermore; a protective order of assessment can be passed but not a protective order of penalty.

Therefore, though the Assessing Officer's action in assessing the income in the hands of both X and Y is valid, the recovery of tax due on the same from X and Y and imposition of penalty under section 271(1)(c) on Y for concealment of income is not valid.

Self-examination Questions

1. What is the penalty leviable under the Income-tax Act, 1961 for -
 - (a) failure to keep or maintain or retain books of account as required under section 44A.
 - (b) failure to furnish audit report as required under section 92E;
 - (c) failure to furnish annual information report within the prescribed time.
2. Discuss the provisions under the Income-tax Act, 1961 which authorise the reduction or waiver of penalty by the Commissioner of Income-tax.
3. What is the period of limitation for levy of penalty under Chapter XXI?
4. Discuss the provisions for levy of penalty on undisclosed income arising consequent to a search initiated under section 132 on or after 1.6.2007.
5. Does the Commissioner have power to grant immunity from penalty? Discuss.
6. Can penalty be levied where a return is filed belatedly under section 139(4)?
7. "The presence of *"mens rea"* is essential for imposition of penalty under section 271(1)(c)" – Discuss the correctness or otherwise of this statement.

Answers

6. Penalty of ₹ 5,000 is attracted under section 271F for failure to furnish return of income as required under section 139(1) before the end of the relevant assessment year. The time allowed for filing a belated return is up to one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. If the belated return under section 139(4) is filed before the end of the relevant assessment year, penalty under section 271F is not attracted. However, if the same is filed after the end of the relevant assessment year, penalty under section 271F is attracted.
7. This statement is not correct.
 The Apex Court, in its ruling in *Dilip N. Shroff v. Joint CIT (2007) 291 ITR 519*, required the presence of 'mens rea' for imposition of penalty under section 271(1)(c). "*Mens rea*" means a guilty mind. However, the Larger Bench of the Supreme Court, in the case of *Union of India v. Dharmendra Textile Processors (2007) 295 ITR 244*, observed that the conceptual and contextual difference between section 271(1)(c) and section 276C was lost sight of in *Dilip N. Shroff's* case. The object behind the enactment of section 271(1)(c) read with the *Explanations* is to provide a remedy for loss of revenue. The penalty under that provision is a civil liability. The Larger Bench held that in cases related to imposition of penalty under section 271(1)(c), willful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C. The Larger Bench, therefore, overruled the decision in *Dilip N. Shroff v. Joint CIT* requiring the presence of '*mens rea*' in cases of penalty imposed under section 271(1)(c). Therefore, 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 penalty had before him and if that record can sustain the finding that there has been concealment, that would be sufficient to sustain the penalty. Hence, there is no need for the revenue to prove that concealment was done by the assessee 'wilfully' in order to impose penalty under section 271(1)(c).