

AO can't impose penalty under sec.271(1)(c) once penalty proceedings are initiated under sec. 271AAA

Summary – The Ahmedabad ITAT in a recent case of Dr. Naman A. Shastri, (the Assessee) held that Provisions of sections 271AAA and 271(1)(c) are mutually exclusive and, thus, once penalty is initiated under section 271AAA for 'specified previous year', there cannot be any occasion to impose penalty under section 271(1)(c)

Facts

- The assessee was a heart surgeon associated with 'C' Limited which was subjected to search and seizure operation on 21-8-2008.
- The assessee filed his return disclosing income from other sources, which was in respect of cash payment for his contribution for the acquisition of land for the hospital project.
- During the course of scrutiny assessment proceedings of the return, in a statement recorded under section 131(1), the assessee confirmed the fact of having paid cash of Rs 68 lakhs towards the purchase of land for the hospital project. It was in said backdrop that the Assessing Officer initiated the penalty proceedings under section 271AAA.
- Even though the penalty proceedings were initiated under section 271AAA, the Assessing Officer changed his mind and finally imposed the penalty under section 271(1)(c).
- The Commissioner (Appeals) confirmed penalty order.
- On second appeal:

Held

- The scheme of section 271AAA which governs penalty on undisclosed income for the 'specified previous year', is like this. In the cases in which search is initiated, the penalty under section 271AAA will come into play in respect of 'undisclosed income' of 'specified previous year', and, to that extent, the provisions of section 271(1)(c) will not be applicable. In other words, so far as penalty in respect of undisclosed income is concerned, section 271AAA will apply to the extent of the 'specified previous year' and, for the other previous years, the provisions of section 271(1)(c) will continue to hold the field.
- The expression 'specified previous year' refers to the previous year in which the search is conducted or the year which has ended but the due date for filing of return in respect of the same has not ended. Coming to the facts of the present case, the search took place on 21-8-2008, and, accordingly, the due date of filing return in respect of the income of this previous year was on or before 30-9-2008. Clearly, even though the previous year ending 31-3-2008 relating to the assessment year 2008-09, had ended on 31-3-2008, the due date of filing of the tax return had not lapsed.

- The year was, therefore, covered by the definition of 'specified previous year' as per Explanation (b) to section 271AAA. It is not in dispute that the income in question has been assessed as income of the assessment year 2008-09, *i.e.* specified previous year on the facts of this case. The Assessing Officer himself has treated the undisclosed income of the assessee as such. Once the year in question is a 'specified previous year', and the undisclosed income belongs to this year, an inevitable corollary to this finding, in view of the discussions above, is that the provisions of section 271AAA will come into play. It is also important to bear in mind the fact that the situations in which provisions of section 271AAA and the provisions of section 271(1)(c) can apply are inherently mutually exclusive. Accordingly, the provisions of section 271(1)(c) cannot be put into service here.
- In any case, once the penalty is initiated under section 271AAA in the assessment order, there cannot be any occasion to impose the penalty under section 271(1)(c).
- In view of these discussions, the Assessing Officer was clearly in error in invoking the provisions of section 271(1)(c) on the facts of this case. Therefore, the impugned penalty is deleted.