



## Discipline regarding “quasi-criminal” penal proceedings

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Discipline regarding penal action under various tax laws are widely discussed. Two interesting recent cases under Income Tax allows one to reflect further. Generally, losses are contested and seldom is it seen that assessee accept a loss return to be assessed as NIL. However, what if in spite of an irrefutable loss the assessee in good faith and, to avoid undue litigation, harassment and, to buy peace of mind agrees to get assessed at NIL income instead of declared loss, can a penalty/prosecution proceeding be initiated against the assessee u/s 271(1)(c) of the Income Tax Act? The answer is that it can be initiated. There is no provision for such pleas of bargain under the Income Tax Act to act as estoppels upon AOs. However, in case the plea is not accepted by the AO, the assessee should be show caused and there should be substance in enquiry and evidence to prove concealment. Penalty proceedings are distinct from assessment proceedings, though they emanate from the assessment proceedings; still, they are separate and independent proceedings all together. The Hon'ble Supreme Court of India in the case of CIT & Act. Vs. M/s SSA's Emerald Meadows in CC dated 05.8.2016 [2016]73 Taxmann.com 48 (SC) has held that notice issued by the Assessing Officer under section 274 read with section 271(1)(c) of the Act was bad in law, as it did not specify under which limb of section 271(1)(c) of the Act, penalty proceedings has been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The assessee should know the grounds which has to meet, otherwise the principles of natural justice are offended. Further, the order has to specify the offence alleged to be committed, as was held in the case of M/s UNITECH REALTY PVT. LTD Vs DCIT, CIRCLE - 27(1), NEW DELHI [2023-VIL- 1036-ITAT-DEL].

Now coming to penalty proceeding u/s 271D which requires that if a person takes any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken. The question is whether levy of penalty under this provision is not depending on the outcome of the assessment order and hence there is no requirement of the assessment proceedings in imposing the provision u/s 271D of the Act. Here Section 275 comes to the rescue which presupposes the existence of assessment proceedings/revision proceedings or appeal proceedings arising from the assessment order or revision order and the limitation is provided as per outcome of these proceedings. In absence of assessment, the initiation of penalty is not valid. The Hon'ble Supreme Court in the case of CIT vs. Jain Laxmi Rice Mills has held that in absence of satisfaction recorded regarding the penalty proceedings u/s 271E/ 271D of the Act the order of levy of penalty is not valid. The same was also reiterated in the case of SHRI UMAKANT SHARMA Vs JCIT RATLAM [2023-VIL-1034-ITAT-IND].

## BRIEF ABOUT THE AUTHOR:

Vivek Jalan is a Chartered Accountant & a qualified L. LM (Constitutional Law) & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairperson – Indirect Tax Core Committee of The Confederation of Indian Industries (CII) - Economic Affairs & Taxation Committee - ER. He is the Chairman of The Ease of Doing Business Committee of The Bengal Chamber of Commerce and Industry. He is a regular Columnist and guest expert in Economic Times, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Indirect Taxes and Direct Taxes which reaches more than 70000 professionals.

He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 15 years of experience in the field of Indirect & Direct Taxation. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books on taxation include the following –

- **UNION BUDGET – 2023-24**
- **HANDBOOK ON GST – August 2022**
- **COMMENTARY ON UNION BUDGET 2022 – Feb 2022**
- **GST PLEADING & PRACTISE – AUGUST 2021**
- COMMENTARY ON UNION BUDGET 2021 – Feb 2021
- SECTION-WISE COMPENDIUM ON GST – Oct 2020
- INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020
- COMMENTARY ON UNION BUDGET 2020 – Feb 2020
- COMMENTARY ON DIRECT TAX VIVAAD SE VISHWAS SCHEME – Feb 2020
- SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
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He is a regular speaker at various professional forums on the various key areas in Indirect & Direct Taxes and has delivered more than 300 lectures on various topics under GST, Customs, Foreign Trade Policy of India, Income Tax, etc.