

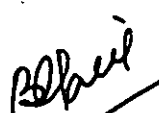



Sr. No.	Date	Orders
		<p data-bbox="414 280 630 324">% 12.01.2004</p> <p data-bbox="454 369 1380 414">Present : Mr R.C.Pandey with Mr Ajay Jha for the petitioner.</p> <p data-bbox="406 492 726 537">+ <u>ITA.No.485/2003</u></p> <p data-bbox="414 537 438 571">*</p> <p data-bbox="406 616 1540 996">Against the order made by the Income Tax Appellate Tribunal (Delhi Bench "C", Delhi) in ITA No. 5645 (Del) 97 for the assessment year 1992-93, the Revenue has preferred this appeal as order of penalty has been cancelled by CIT(A) and such cancellation has been confirmed by the Tribunal.</p> <p data-bbox="406 1030 1548 2060">We are not required to examine the facts in detail, but it is apparent that the bank has given the pass book to the assessee which has not reflected the correct figures in respect of two entires only. Under the Banker's Books Evidence Act, the pass book is a documentary evidence to be acted upon. In the instant case, a copy of the ledger is also produced to show that two entries in the pass-book were incorrect. The assessee has rendered the explanation and paid the tax. The CIT(A) has accepted the explanation that the assessee did not engage any accountant and was in the habit of filing his own return of income and the mistake occurred inadvertently. The explanation has been considered to be bona fide by the Tribunal also. Learned counsel for the Revenue has relied upon the judgement of Supreme Court in <u>K.P.Madhusudhanan vs Commissioner of Income Tax 251 ITA 99</u> and submitted that the Tribunal has seriously</p>



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		<p>erred in not allowing the appeal preferred by the revenue.</p> <p>Explanation 1 to section 271(1) is also required to be kept in mind at this stage.</p> <p>“ <i>Explanation 1.</i> Where in respect of any facts material to the computation of the total income of any person under this Act, -</p> <p>(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false or</p> <p>(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,</p> <p>then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this subsection, be deemed to represent the income in respect of which particulars have been concealed.”</p> <p>Thus, it is necessary that if a person has failed to offer an explanation or offers an explanation which is found to be false by the Income Tax Officer or Appellate Commissioner, action can be taken. If any explanation, which is bona fide, within the totality of the case is offered and accepted as indicated by lower authorities, the assessee would be absolved of liabilities of penalty. There are two sets of evidence. one produced by the assessee in the form of a pass-book and</p>



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		<p>another copy of the bank ledger. The pass book normally reflects whatever is in the ledger but, if in respect of two entries there is an error committed by the bank officials and the same is relied upon by the assessee and the latter's explanation is accepted, we do not think that any case is made out. No question of law arises.</p> <p>The appeal is dismissed.</p> <p style="text-align: right;"> CHIEF JUSTICE</p> <p style="text-align: right;"> BADAR DURREZ AHMED (JUDGE)</p> <p>January 12, 2004 m</p>