

(2010) 10 P&amp;H CK 0274

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Income-tax Appeal No. 133 of 2008

Commissioner of Income Tax

APPELLANT

Vs

Sh. Rajesh Rana

RESPONDENT

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**Date of Decision:** Oct. 14, 2010**Acts Referred:**

- Income Tax Act, 1961 - Section 133A, 260A, 271(1)

**Citation:** (2011) 335 ITR 207**Hon'ble Judges:** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J**Bench:** Division Bench

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**Judgement**

Adarsh Kumar Goel, J.

On 7.7.2009, the following order was passed:

1. This appeal has been preferred by the Revenue u/s 260A of Income Tax Act, 1961 (for short, "the Act") against the order of Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, dated 3.8.2007 passed in ITA No. 381 (ASR)/2006-Assessment Year 1994-95, proposing to raise following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the ITAT was right in law in upholding the order of the CIT(A) deleting the penalty of Rs. 1,14,770/- imposed u/s 271(1)(c) of the Income Tax Act, 1961.?

2. Whether on the facts and in the circumstances of the case, the ratio of judgment of the Hon'ble Punjab and Haryana High Court in the case of CIT v. M/s. Munish Iron Store reported at 263 ITR 483 is applicable in the present case when the finding regarding furnishing of inaccurate particulars of income have been given in the assessment order in a detailed manner?

2. During assessment for the assessment year in question, the Assessing Officer on the basis of survey u/s 133A found that the assessee had stocks in excess of stock entered in the books of accounts. The assessee surrendered some of the amounts

as additional income to cover up the discrepancies. However, the Assessing Officer made additions to the declared amount. Notice for imposition of penalty was also issued and order of penalty was separately passed.

3. The quantum matter is subject matter of ITA No. 344 of 2005 at the instance of the assessee.

4. On appeal, CIT(A) set aside the penalty only on the ground that from the proceedings recorded by the A.O., the requirement of Section 271(1)(c) of the Act was not met as it was not recorded that a case of penalty was made out while mentioning that notice for penalty proceedings had been separately issued.

5. Learned Counsel for the Revenue points out that this issue was considered by this Court in [Commissioner of Income Tax Vs. Pearey Lal and Sons \(EP\) Ltd.](#), and it was held that order of this nature could not be set aside on the ground that requirement of Section 271(1)(c) of the Act was not made. Existence or otherwise of satisfaction was not a matter of form but of substance.

6. Learned Counsel for the Assessee submitted that even if the requirement of Section 271(1)(c) was met, the assessee was entitled to be heard on merits of justification for levy of penalty. The CIT (A) has set aside the penalty, without going into the merits of the issue.

7. In view of the above, though the matter may have been liable to be remitted to the CIT(A) for deciding the issue afresh after considering the view point of the assessee on merits, but since it is pointed out that quantum case is pending in this Court, we consider it appropriate to direct that this appeal be listed along with ITA No. 344 of 2005.

3. We have heard learned Counsel for the parties.

4. By a separate order passed today, ITA No. 344 of 2005 Sh. B.S. Rana v. Commissioner of Income Tax, Jalandhar has been dismissed. In view of earlier order, this appeal is allowed and orders of the CIT (A) as well as the Tribunal are set aside. The matter is remanded to the CIT(A) for fresh decision in accordance with law. The assessee may appear before the CIT(A) on 20.12.2010.