

**No.402/92/2006-MC (13 of 2008)**  
**Government of India / Ministry of Finance**  
**Department of Revenue**  
**Central Board of Direct Taxes**

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**PRESS RELEASE**

There have been some reports in the media expressing apprehension on the retrospective amendment to section 271 of the Income-tax Act, proposed in the Finance Bill, 2008, which empowers the assessing officer to, inter-alia, levy penalty in case of concealment of income.

2. In the context of levy of penalty under section 271 of the Income-tax Act, there has been an ongoing dispute between the Income-tax department and taxpayers on whether an assessing officer is required to record his satisfaction before initiating penalty proceedings. The Income-tax department has held the view that no separate satisfaction is required to be recorded before initiating penalty proceedings. In the case of Commissioner of Income-tax Vs. S.V. Angidi Chettiar (44 ITR 739; 1962), the Supreme Court has, while dealing with penalty under section 28 of the Indian Income-tax Act, 1922, held that “*satisfaction before conclusion of proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction*”. The same matter came up once again before the Calcutta High Court in the case of Becker Gray And Company (1930) Limited Vs. Income-tax Officer, Central Circle-I, Calcutta and Others (112 ITR 503; 1977). Relying on the Supreme Court decision in the above case, the Calcutta High Court held that “*It is true that the Income-tax Officer should be prima facie satisfied before the penalty notice is issued, but it does not mean that he is required to record such satisfaction in writing in every case.*” Following these decisions, wherever additions are made, assessing officers have, without separately recording any satisfaction, been issuing directions for initiating penalty proceedings.

3. However, interpreting the aforesaid Supreme Court decision, the Delhi High Court has, in the case of CIV Vs. Ram Commercial Enterprises Limited (246 ITR 568; 2000) held that “*It is the assessing authority which has to form its own opinion and record its satisfaction before initiating penalty proceedings.*”

4. Subsequently, the Allahabad High Court went into this issue in the case of Shyam Biri Works Pvt. Ltd. Vs. CIT (259 ITR 625; 2002). After considering the above Calcutta High Court decision and the Delhi High Court decision, it has held that “*With profound respect to the Delhi High Court decision, we are unable to agree.... We are, therefore, of the opinion that although the Assessing Officer must have satisfaction as required under section 273 of the Act, it is not necessary for him to record that satisfaction in writing before initiating penalty proceedings under section 273 of the Act.*”

5. In view of conflicting judicial opinion on this issue, it was necessary to make legislative intervention and settle the matter. Therefore, clause 48 of the Finance Bill, 2008 proposes to insert a new sub-section (1B) in section 271 of the Income-tax Act so as to unambiguously provide that where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment, and such order contains a direction for initiating of penalty proceedings under sub-section (1) of section 271, such an order of assessment or reassessment shall be deemed to constitute satisfaction of the assessing officer for initiating penalty proceedings under sub-section (1) of that section.

6. The proposed amendment has been given retrospective effect in order to protect the revenue's contention on this issue in pending cases. However, this retrospective effect will not prejudice taxpayers' right to agitate the levy of penalty on merits. Further, while no separate satisfaction is required to be recorded before initiating penalty proceedings, it is still incumbent upon the assessing officer to record his satisfaction before levying the penalty. Accordingly, there is neither violation of the principle of natural justice nor any prejudice caused to the taxpayer as a result of the retrospective amendment.

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