Commissioner of Income Tax, Chennai v. Indian Overseas Bank

T.C.A. Nos. 64 & 65 of 2014

2026:MHC:774 | 2026-02-05

Section 271(1)(c) concealment penalty deleted where public-sector bank made a bona fide, fully disclosed double-taxation relief claim under section 90 for its Hong Kong SAR branch.

Income-tax Act, 1961: sections 90, 260A and 271(1)(c) | India-China DTAA (Hong Kong SAR branch territory scope prior to Finance (No. 2) Act, 2009)

High Court of Judicature at Madras | 2-judge bench (Division Bench) | Dr. Anita Sumanth, J. | Mummineni Sudheer Kumar, J.

Assessment years: 2006-07, 2007-08

Penalty relief does not validate the treaty claim

The bank accepted the quantum disallowance after the CIT(A) order. The Court upheld penalty deletion because the legal error was bona fide and income particulars were disclosed. The source does not state the penalty amounts or return-filing dates printed in the earlier note.

01 FACTS OF THE CASE

Revenue challenged the ITAT's common order deleting section 271(1)(c) penalties for AYs 2006–07 and 2007–08. The caption identifies the ITAT order as 14 February 2013 in ITA 1990 and 1991 of 2011. Indian Overseas Bank claimed India–China treaty relief for its Hong Kong branch, believing the territory's transfer to China justified that treatment. It accepted the quantum disallowance after the CIT(A)'s 9 September 2011 order, but contested penalty. Revenue argued that the absence of treaty coverage and acceptance of disallowance justified penalty; the bank relied on its bona fide interpretation and disclosure of income.

Source: Caption; paras.1–16; PDF pp.1–6

02 DISCUSSION BY THE HON'BLE COURT

The Court held the treaty interpretation erroneous but plausible in the historical setting, explaining the significance of the 2009 amendment enabling agreements with specified territories. It regarded the bank's decision not to pursue the quantum claim after the CIT(A) order as consistent with accepting that clarification. The branch income was disclosed and not inaccurately reported. Applying Reliance Petroproducts, and discussing Dharmendra Textile Processors, it held that the civil nature of penalty does not dispense with the statutory requirements of concealment or inaccurate particulars. A disallowance alone does not establish those requirements.

Source: Paras.12–28; PDF pp.5–11

03 JUDICIAL DECISION

With both counsel's concurrence, the Court reframed the admitted question by replacing inflated claim with erroneous claim. It answered the reframed question in favour of the assessee and dismissed both Tax Case Appeals without costs.

Source: Paras.29–32; PDF pp.12–13

04 OUTCOME / IN WHOSE FAVOUR

Deletion of the section 271(1)(c) penalties remained intact for both assessment years. The underlying treaty-relief disallowance was not reversed. The source gives no penalty quantum and does not decide section 270A or present-day Hong Kong treaty eligibility.

Source: Paras.5–6,16,23–32; PDF pp.3,6,9–13

05 EXPERT COMMENTS

Separate an incorrect claim from incorrect particulars — The Court found the branch income disclosed and the mistake confined to treaty interpretation. A penalty response should identify the actual particulars alleged to be concealed or inaccurate and reconcile them to the return and accounts. An unsuccessful legal claim does not itself identify a factual misstatement.

Use the actual historical explanation — The Court accepted the plausibility of the bank's understanding before the 2009 clarification and noted its acceptance of the quantum result after the 2011 CIT(A) order. Accepting a quantum disallowance therefore did not amount to conceding concealment. Preserve the explanation, the disclosure and the reasons for ending the quantum challenge; each bears on the distinct penalty inquiry.

Civil liability still requires the statutory conditions — The discussion of Dharmendra Textile Processors does not restore mens rea as an essential element. Reliance Petroproducts is used to insist that the conditions of section 271(1)(c) must exist. Establish the nature of the explanation and disclosure; neither civil liability nor bona fides alone substitutes for examining the statutory ingredients.

Keep penalty relief within its bounds — The Court changed inflated to erroneous because no inflated figures were alleged. It did not grant the underlying treaty relief. A section 270A case or a claim under a later treaty requires its own statutory and factual analysis; neither is decided here. Subsequent treatment remains unverified.

Source: Editorial analysis; sources identified in the structured comments

SOURCE & VERIFICATION

Madras High Court official digital judgment PDF - AKHB Cloud Repository

Fourteen-page common judgment; own paragraphs 1–32, including a quotation from Reliance Petroproducts. Final page is the cover sheet.

All 14 source pages read and visually inspected; original hash verified. AI-assisted substantive review.

Open cited source rendition

Source bytes and identity checked; see panel-specific source references.

STATUTORY SCOPE

Penalty under section 271(1)(c) for AYs 2006–07 and 2007–08. The judgment discusses section 90 and its 2009 specified-territory amendment; it is not a section 270A ruling.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment not independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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