



CASE STUDY (03 JAN)-THE INCOME TAX ACT, 1961

QUESTION : *Can an assessee who has surrendered his income in response to the specific information sought by the Assessing Officer in the course of survey, be absolved from the penal provisions under section 271(1)(c) for concealment of income?*

SECTION 271(1)(C) OF INCOME TAX ACT, 1961

The scheme of section 271(1)(c) of the Act visualizes situations to levy penalty in the manner as detailed below:

- i). The assessee has concealed income or*
- ii). The assessee has furnished inaccurate particulars of income.*
- iii). In addition to these two situations, penalty can also be imposed, inter alia, when assessee is deemed to have concealed particulars of income under Explanation 1 to section 271(1)(c) of the Act.*

This explanation provides that the assessee will be deemed to have concealed particulars of income wherein respect of any facts material to the computation of the total income of any person under this Act.

Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—

(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

(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, 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 sub-section, be deemed to represent the income in respect of which particulars have been concealed.

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LET'S CONSIDER A DECIDED CASE - MAK Data P. Ltd. v. CIT (2013) 358 ITR 593 (SC)

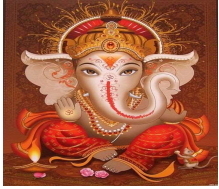
FACTS OF THE CASE:

1. *The assessee-company filed its return of income for the A.Y. 2012-13 declaring an income of Rs. 16.17 lakh along with tax audit report.*
2. *The assessee's case was selected for scrutiny and notices were issued under section 143(2) and section 142(1).*
3. *During the course of assessment proceedings, it was noticed by the Assessing Officer that certain documents, namely, share application forms, bank statements, memorandum of association of companies, affidavits, copies of income-tax returns and assessment orders and blank share transfer deeds duly signed, had been found in the course of survey proceedings under section 133A conducted on December 16, 2011, in the case of a sister concern of the assessee, and the same were impounded.*
4. *The Assessing Officer issued a show cause notice dated October 26, 2014 to the assessee seeking specific information regarding the documents pertaining to share applications found in the course of survey, particularly, blank transfer deeds signed by persons who had applied for the shares.*
5. *In its reply to the show cause notice, the assessee made an offer to surrender a sum of Rs. 40.74 lakhs by way of voluntary disclosure without admitting any concealment or any intention to conceal and subject to non-initiation of penalty proceedings and prosecution.*
6. *The Assessing Officer, however, completed the assessment bringing the sum of Rs. 40.74 lakhs to tax and levied penalty under section 271(1)(c) for concealment of income and not furnishing true particulars.*

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SUPREME COURT'S OBSERVATIONS:

- 1. The Apex Court observed that the assessee had stated that the surrender of the additional sum was with a view to avoid litigation, to buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the Income tax Department.*
- 2. The Court observed that these types of defenses are, however, not recognized under the statute.*
- 3. It further observed that the survey was conducted and documents were impounded ten months before the assessee filed its return of income.*
- 4. The Court opined that had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings.*
- 5. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year.*

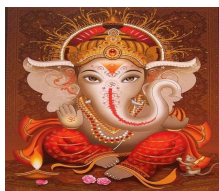
APEX COURT'S DECISION:

- 6. The Apex Court was, therefore, of the view that surrender of income in this case is not voluntary, in the sense, that the offer of surrender was made in view of detection made by the Assessing Officer in the survey conducted in the sister concern of the assessee. The Apex Court, therefore, held that levy of penalty is correct in law.*

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LET'S CONSIDER SOME CASES OF VOLUNTRY SURRENDER OF INCOME IN WHICH VARIOUS HIGH COURTS AND APEX COURT HAS DECIDED IN FAVOUR OF ASSESSEE;

1. A close study of the recent cases reveals the liberal judicial approach in applying the specific and strict provisions of section 271(1)(c). Voluntary surrender of the alleged undisclosed income just to buy peace of mind has emerged as an exception protecting the assessee against penalty even in an obvious case. Thus, the Madras High Court in the case of **CIT vs. Jayaraj Talkies (1999) 239 ITR 914 (Mad)** held that mere agreement to addition of income or surrender of income did not imply concealment of income where the assessee surrendered certain amount to assessment because it was unable to substantiate its claims with necessary vouchers.
2. Similarly, **the Kerala High Court in the case of CIT vs. M. George & Brothers (1987) 59 CTR (Ker) 298 : (1986) 160 ITR 511 (Ker)** held that where the assessee for one reason or the other agrees or surrenders certain amounts for assessment, the imposition of penalty solely on the basis of the assessee's surrender will not be well founded.
3. **In CIT vs. Suraj Bhan (2006) 203 CTR (P&H) 230 : (2007) 294 ITR 481 (P&H), the Punjab & Haryana High Court** held that penalty cannot be imposed merely on account of higher income having been subsequently declared. In this case, the assessee filed revised return showing higher income and gave the explanation that the higher income was offered to buy peace of mind, and to avoid litigation.
4. **The Punjab & Haryana High Court,** again, seems to have gone a step further in defying the specific provision of Explanation 1. In this case, transportation charges to the tune of Rs.12,12,880 debited in the profit and loss account, when detected and investigated by the Assessing Officer during the assessment proceedings, the assessee could not satisfactorily explain the same. The assessee, without filing a revised return, surrendered the said uncorroborated amount of expenses merely to buy peace of mind and to avoid further litigation. Although it was a clear-cut case of concealment penalty but the Punjab & Haryana High Court rather unconvincingly found that since the impugned payments were directly made by the suppliers, therefore, there was neither concealment of income nor furnishing of inaccurate particulars of income within the meaning of section 271(1)(c).

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"The Department has to prove mens rea before levying penalty under section 271(1)(c) and it cannot be made out that the assessee has concealed income or furnished inaccurate particulars merely because he has surrendered certain amount to avoid litigation and to buy peace of mind."

It appears that in all the afore discussed cases, the respective Madras, Kerala, Punjab & Haryana High Courts relied on the two rulings of the Supreme Court, viz., Sir Shadi Lal Sugar & General Mills Ltd. vs. CIT (1987) 64 CTR (SC) 199 : (1987) 168 ITR 705 (SC) and CIT vs. Suresh Chandra Mittal (2001) 170 CTR (SC) 182 : (2001) 251 ITR 9 (SC).

5. In **Sir Shadi Lal Sugar & General Mills Ltd. (supra)** it was categorically ruled that if the assessee had agreed to the assessment of undisclosed income, it did not absolve the Revenue from proving mens rea in a quasi criminal offence.
6. In **Suresh Chandra Mittal's case (supra)** the Court came out with an epoch-making ruling, viz., if an assessee files a revised return showing higher income and gives explanation that he has offered higher income to buy peace of mind and to avoid litigation, penalty cannot be imposed merely on account of higher income having been subsequently declared.

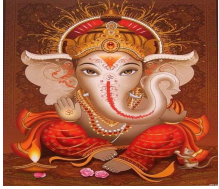
ASSESSEE'S CONSENT FOR ADDITION SHALL NOT ABSOLVE THE ASSESSEE FROM BURDEN OF PROOF

1. In an earlier case of **Sir Shadilal Sugar & General Mills Ltd. vs. CIT (1987) 64 CTR (SC) 199: (1987) 168 ITR 705 (SC) : TC 50R.300**, a two Judges Bench of the Supreme Court, in the context of the assessment year 1958-59, firmly stated that if an assessee admitted that there were incomes, it could not amount to an admission that there was deliberate concealment. "From agreeing to additions, it does not follow that the amount agreed to be added was concealed income. There may be a hundred and one reasons for such admission, i.e., when the assessee realises the true position, it does not dispute certain disallowances but that does not absolve the Revenue from proving the mens rea of a quasi criminal offence".

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2. ***The three Judges Bench of the Supreme Court in the recent case of K.P. Madhusudhanan (supra) expressly stated that the afore quoted observation was made prior to the insertion of Explanation. Therefore, it is no longer good after the insertion of Explanation. No burden lies on the Revenue to prove mens rea even if the assessee has agreed the additions to his income as by virtue of the Explanation the assessee is not absolved from the initial burden laid on him by the Explanation, Emphatically stated the Court.***

"The Explanation to section 271(1)(c) is a part of section 271". Therefore, when the designated tax-authority issues to an assessee a notice under Section 271, he makes the assessee aware that the provisions thereof are to be used against him. These provisions include the Explanation. The notice under section 271 puts the assessee to notice that he has to rebut the presumption drawn against him by virtue of the Explanation; otherwise he has to bear the penalty, emphatically concluded the Court.

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