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MAK DATA P. LTD.

v.

COMMISSIONER OF INCOME TAX-II

(Civil Appeal No. 9772 of 2013)

OCTOBER 30, 2013

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[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

*Income Tax Act, 1961 - s.271 r/w s.274 - Explanation 1 to s.271(1)(c) - Scope of - Concealment of income - Penal proceedings against appellant - Challenge to - Held: Explanation to s.271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income - Burden is then on the assessee to show otherwise, by cogent and reliable evidence - When the initial onus placed by the Explanation, is discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise - The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty - On facts, the surrender of income by appellant-assessee was not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee - 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 - Clearly the assessee had no intention to declare its true income - The AO had recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and was liable for penalty proceedings under s.271 r/w s.274 - No illegality found in the department initiating penalty proceedings against the appellant-assessee.*

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TAX-II

The Appellant-assessee filed its return of income. A  
The case was selected for scrutiny and notices were  
issued under Sections 143(2) and 142(1) of the Income  
Tax Act. The Assessing Officer (AO) issued show-cause  
notice seeking specific information regarding certain B  
documents pertaining to share applications found in the  
course of survey proceedings under Section 133A  
conducted in the case of a sister concern of the  
assessee. In reply to the show-cause notice, the  
assessee made offer to surrender a sum of Rs.40.74 lakhs  
with a view to avoid litigation and buy peace and to make C  
an amicable settlement of the dispute. The AO after  
verifying the details and calculations of the share  
application money accepted by the appellant-Company  
completed the assessment, and a sum of Rs.40,74,000/-  
was brought to tax, as "income from other sources" and D  
the total income was assessed at Rs.57,56,700/-. The  
department thereafter initiated penalty proceedings for  
concealment of income and not furnishing true  
particulars of its income under Section 271(1)(c) of the  
Income Tax Act. The AO imposed a penalty of E  
Rs.14,61,547/- under Section 217(1)(c) of the Act. The  
Tribunal set aside the penalty order, holding that the  
amount of Rs.40,74,000/- was surrendered to settle the  
dispute with the department and since the assessee, for  
one reason or the other, agreed or surrendered certain F  
amounts for assessment, imposition of penalty solely on  
the basis of assessee's surrender could not be sustained.  
The High Court set aside the judgment of Tribunal holding  
that there was absolutely no explanation by the assessee  
for the concealed income of Rs.40,74,000/-; and in G  
absence of any explanation in respect of the surrendered  
income, the first part of clause (A) of Explanation 1 to  
Section 271(1)(c) of the Act was attracted.

Dismissing the appeal, the Court

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**A HELD: 1.1. The Tribunal has not properly understood or appreciated the scope of Explanation 1 to Section 271(1)(c) of the Income Tax Act. The AO should not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the**

**C Explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise. [Paras 6, 7] [576-D; 577-B-D]**

**D 1.2. In the instant case, the assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defences under the Explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The**

**E statute does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty. [Para 8] [577-D-F]**

**G 1.3. The 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 AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings noticed that certain documents comprising**

**H of 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, have been impounded in the course of survey proceedings under Section 133A conducted in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. 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. Consequently, it is clear that the assessee had no intention to declare its true income. 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. The AO recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961. [Para 9] [577-F-H; 578-A-D]

1.4. The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. No illegality is found in the department initiating penalty proceedings in the instant case. [Paras 10, 11] [578-E, G]

*Union of India vs. Dharmendra Textile Processors (2008)*  
**13 SCC 369: 2008 (14) SCR 13 and CIT vs. Atul Mohan**  
*Bindal (2009) 9 SCC 589: 2009 (13) SCR 464 - relied on.*

**Case Law Reference:**

**2008 (14) SCR 13**      **relied on**      **Para 10**      **H**

A        **2009 (13) SCR 464**        relied on        **Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9772 of 2013.

B        From the Judgment and Order dated 22.01.2013 of the High Court of Delhi at New Delhi in ITA 415 of 2012.

S. Krishan, Rani Chhabra for the Appellant.

C        V. Shekhar, Purnima Bhat, Reshmi Malhotra, Piyush Jain,, Vishal Saxena, Ashly Cherian, S. Rama, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

**K.S. RADHAKRISHNAN, J.** 1. Leave granted.

D        2. The Appellant-assessee filed his return of income for the assessment year 2004-05 on 27th October, 2004, declaring an income of Rs.16,17,040/- along with Tax Audit Report. The case was selected for scrutiny and notices were issued under Sections 143(2) and 142(1) of the Income Tax Act. During the  
E        course of the assessment proceedings, it was noticed by the Assessing Officer (AO) that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer  
F        deeds duly signed had been impounded. These documents had been found in the course of survey proceedings under Section 133A conducted on 16.12.2003 in the case of M/s Marketing Services (a sister concern of the assessee). The AO then proceeded to seek information from the assessee and  
G        issued a show-cause notice dated 26.10.2006. By the show-cause notice, the AO sought specific information regarding the documents pertaining to share applications found in the course of survey, particularly, bank transfer deeds signed by persons, who had applied for the shares. Reply to show-cause notice  
H        was filed on 22.11.2006, in which the assessee made an offer

to surrender a sum of Rs.40.74 lakhs with a view to avoid litigation and buy peace and to make an amicable settlement of the dispute. Following are the words used by the assessee:- A

"The offer of surrender is by way of voluntary disclosure of without admitting any concealment whatsoever or with any intention to conceal and subject to non-initiation of penalty proceedings and prosecution." B

3. The AO after verifying the details and calculations of the share application money accepted by the Company completed the assessment on 29.12.2006 and a sum of Rs.40,74,000/- was brought to tax, as "income from other sources" and the total income was assessed at Rs.57,56,700/-. C

4. The department initiated penalty proceedings for concealment of income and not furnishing true particulars of its income under Section 271(1)(c) of the Income Tax Act. During the course of the hearing, the assessee contended that penalty proceedings are not maintainable on the ground that the AO had not recorded his satisfaction to the effect that there has been concealment of income/furnishing of inaccurate particulars of income by the assessee and that the surrender of income was a conditional surrender before any investigation in the matter. The AO did not accept those contentions and imposed a penalty of Rs.14,61,547/- under Section 217(1)(c) of the Act. The assessee challenged that order before the Commissioner of Income Tax (Appeals) by filing Appeal No.2/07-08, which was dismissed vide order dated 17.2.2010. The assessee filed an appeal being ITA No.1896/Del/10 before the Income Tax Appellate Tribunal, Delhi. The Tribunal recorded the following findings :- D  
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"The assessee's letter dated 22.11.2006 clearly mentions that "the offer of the surrender is without admitting any concealment whatsoever or any intention to conceal." G

The Tribunal took the view that the amount of H

- A Rs.40,74,000/- was surrendered to settle the dispute with the department and since the assessee, for one reason or the other, agreed or surrendered certain amounts for assessment, the imposition of penalty solely on the basis of assessee's surrender could not be sustained. The Tribunal, therefore,
- B allowed the appeal and set aside the penalty order.

5. The Revenue took up the matter in appeal before the High Court by filing ITA No.415 of 2012. The High Court accepted the plea of the Revenue that there was absolutely no explanation by the assessee for the concealed income of
- C Rs.40,74,000/-. The High Court took the view that in the absence of any explanation in respect of the surrendered income, the first part of clause (A) of Explanation 1 is attracted. Holding so, the judgment of the Tribunal was set aside and the
- D appeal filed by the Revenue was allowed.

6. We have heard counsel on either side. We fully concur with the view of the High Court that the Tribunal has not properly understood or appreciated the scope of Explanation 1 to Section 271(1)(c) of the Act, which reads as follows :-

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

- F (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
- G (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
- H the total income of such person as a result thereof

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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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7. The AO, in our view, shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

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8. Assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defences under the explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.

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9. We are of the view that the 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 AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of

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- A association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee.
- B The survey was conducted more than 10 months before the assessee filed its return of income. 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. Consequently, it is clear that the
- C assessee had no intention to declare its true income. 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. The AO, in our view, has recorded a
- D categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.

- E 10. The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of Section 271(1)(c) has also been elaborately
- F discussed by this Court in *Union of India vs. Dharmendra Textile Processors* (2008) 13 SCC 369 and *CIT vs. Atul Mohan Bindal* (2009) 9 SCC 589.

- G 11. The principle laid down by this Court, in our view, has been correctly followed by the Revenue and we find no illegality in the department initiating penalty proceedings in the instant case. We, therefore, fully agree with the view of the High Court. Hence, the appeal lacks merit and is dismissed. There shall be no order as to costs.

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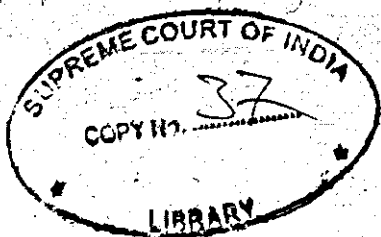
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