

Voluntary disclosures by taking plea of 'buy peace' will not absolve one from concealment penalty

Summary – The Supreme Court of India in a recent case of MAK Data (P.) Ltd., (the Assessee) held that voluntary disclosure does not release assessee from mischief of penal proceedings under section 271(1)(c).

Facts

- For relevant assessment year, assessee filed its return declaring certain income.
- During the 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 deeds duly signed had been impounded in the course of survey proceedings conducted in the case of (a sister concern of the assessee).
- By the show-cause notice, the Assessing Officer 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.
- In reply, 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.
- The Assessing Officer completed the assessment wherein amount surrendered was brought to tax, as 'income from other sources'.
- The Assessing Officer also passed a penalty order under section 271(1)(c).
- The Tribunal set aside penalty order holding that the imposition of penalty solely on the basis of assessee's surrender could not be sustained.
- The High Court took a view that in the absence of any *explanation* in respect of the surrendered income, the first part of clause (A) of *Explanation 1* to section 271(1)(c) was attracted. Holding so, the judgment of the Tribunal was set aside and the appeal filed by the revenue was allowed.
- On appeal to the Supreme Court:

Held

- The Assessing Officer, 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 Assessing Officer, 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.
- Assessee has only stated that he had surrendered the additional sum 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). It is trite law that the voluntary disclosure does not release the assessee from the mischief of penal proceedings under section 271(1)(c). The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he has to be absolved from penalty.
- The surrender of income on 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 search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary.
- 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 Assessing Officer, has 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.
- The Assessing Officer has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the Assessing Officer is not required to record his satisfaction in a particular manner or reduce it into writing.
- In view of above, impugned penalty order passed by the High Court deserved to be confirmed.