

## No penalty or prosecution if return was voluntarily filed in good faith prior to detection of concealment

**Summary – The High Court of Punjab & Haryana in a recent case of Raj Bricks Field, (the Assessee) held that where return filed by petitioner is voluntary, filed in good faith and before detection of any concealment, neither penalty would be levied under section 271(1)(c) nor any criminal proceedings under section 276C could be allowed.**

### Facts

- The petitioner was a partnership concern, which filed a return and declared income of Rs. 23,570. The Assessing Officer issued notice under sections 143(2) and 142(1) to the assessee. The assessee filed a revised return and declared income of Rs 1.13 lakh with a note that revised return was filed subject to no penalty and prosecution. However, the Assessing Officer imposed penalty of Rs. 38,765.
- On appeal, the Commissioner (Appeals) confirmed the order of penalty. Subsequently, the revenue filed a complaint against the assessee under sections 276C and 277, read with section 278B in the Court of Sub-Divisional Judicial Magistrate.
- Meanwhile, the assessee filed appeal before the Tribunal against the order of Commissioner (Appeals). The Tribunal deleted the penalty on the ground that return by the assessee was a voluntary return filed in good faith and before the detection of any concealment by the Assessing Officer.
- On revenue's appeal to the High Court, said order of the Tribunal was upheld.
- On the basis of above judgment, the petitioners filed an application under section 245(2) Cr. P.C. before the Chief Judicial Magistrate for quashing the complaint filed by revenue. The Trial Court accepted the application, dismissed the complaint and discharged the assessee.
- On revision petition filed by the revenue, the Revisional Court held in favour of the revenue.
- On appeal:

### Held

- It is a settled principle of law that a decision of Adjudicatory Authority which in the present case was Appellate Tribunal, cannot be ignored when it has become conclusive while considering the maintainability of prosecution.
- It is clear that once authorities under the Act return a finding that there is no concealment of income, the prosecution is not sustainable on the allegation of concealment of income. *Vide* order of Appellate Tribunal, it has been held that there is no concealment and the return filed by the assessee was voluntary, filed in good faith and before the detection of any concealment. *Vide* said order, the penalty imposed under section 271(1)(c) has been set aside. The Magistrate had, rightly appreciated that once the Tribunal of a Department i.e. Adjudicatory Authority, holds that there is

no concealment of income on part of the accused and the penalty is deleted, the very basis of the complaint is knocked down and continuation of complaint will be an abuse of the process of the Court.

- It is not out of place to observe here that curtailing the liberty of a person by launching prosecution against him when there is no foundation of the allegation would be an abuse of the process of the Court and would certainly be violative of Article 21 of the Constitution of India.
- No useful purpose will be served by continuing the criminal proceedings against the petitioners on the ground of concealment of income when the Tribunal held that there has not been any concealment of income for the assessment year 1988-89.
- Thus, petition is allowed and all the proceedings against the petitioners are hereby set aside.