

## Voluntary disclosure of income in subsequent year won't absolve assessee from liability to pay penalty

**Summary – The High Court of Bombay in a recent case of Shanti Ramanand Sagar., (the Assessee) held that where assessee deferred declaration of income to subsequent year and furnished inaccurate particulars of income for year under appeal, and, thus, avoided tax liability, merely because in subsequent year disclosure was made voluntarily, assessee would not be absolved from liability to pay penalty**

### Facts

- The assessee sold a movie, namely, 'Charas' to Prakash Pictures on minimum guarantee basis for Rs. 13.70 lakh. Since the assessee had shown only Rs. 3.91 lakh, the assessment was reopened under section 147(a). In response to the notice under section 148, the assessee returned an income of Rs. 4,98,530 as against the earlier returned loss of Rs. 6.93 lakh.
- The Assessing Officer observed that the addition of Rs. 9.79 lakh made on account of minimum guarantee realisation was upheld by the AAC and the addition was accepted by the assessee. In view of these facts, penalty of Rs. 6,46,588 was levied under section 271(1)(c).
- On appeal, the Commissioner (Appeals) cancelled this penalty on the ground that since the assessee had shown the balance income in his return for assessment year 1978-79, there was no concealment.
- On further appeal before the Tribunal, the assessee would submit that the nature of the income was not known and the amount was treated as a deposit by the assessee because the assessee was not sure whether the film would not well or otherwise and, thus, there was absolutely no question of concealment because the assessee might treat the amount as an advance or a minimum guarantee. The Tribunal held that non-availability of the agreement would not mean that the nature of the transaction could not be disclosed. If the assessee had declared a loss, he thwarted his tax liability for two years by not declaring the entire receipts in the assessment year 1977-78. The Tribunal recorded a finding that even after the set-off of brought forward losses, the current year's loss would have been converted into positive income with the inclusion of the balance receipt of the minimum guarantee amount. By declaring the balance amount in the subsequent year, the assessee certainly furnished inaccurate particulars of income for the year under appeal and either avoided or deferred his tax liability. Therefore, the Tribunal restored the penalty.
- On appeal:

### Held

- The assessee should have been candid and honest in disclosing that the agreement with Prakash Pictures resulted in the assessee obtaining the sum of Rs. 13.70 lakh. In respect of the distribution right of the picture "Charas" in Bombay Territory. The assessee, in the original file, did not disclose fully and truly all the particulars of income for the relevant year. The assessee maintains that the

amount was not to be realised fully, but it was inaccurate in the sense that the distributor Prakash Pictures was also assessed to tax. Prakash Pictures produced the record which referred that the assessee was paid the same price of Rs. 13.70 lakh. Prakash Pictures debited this amount as the cost of acquisition of the picture. It is in these circumstances that the assessee managed to thwart the tax liability as rightly held by the Tribunal. This finding of fact rendered by the Tribunal cannot be termed as perverse. The Commissioner (Appeals), was carried away by the fact that the sum of Rs. 13.70 lakh was split in two parts, namely, Rs. 3.91 lakh and Rs. 9.79 lakh respectively shown as minimum guarantee receipt and as advance from the distributor. However, the explanation of the assessee was that there is no concealment and at the time the accounts were framed, the assessee did not have the agreement between the parties so that it was not clear as to what was the minimum guarantee commission and what was the advance. Thus, this was a technical error. This argument somehow found favour with the Commissioner as is apparent from his reasoning of the order.

- The Tribunal rightly came to the conclusion that it was immaterial as to whether the agreement was available or otherwise. However, it is not possible that the agreement in writing was not available. Even if formal written agreement was not available, it certainly would have been on the basis of some prior negotiations. The assessee and Prakash Pictures are both in film making and distributing business. Hence, they ought to have known the nature of transaction despite non-availability of the agreement. Secondly, the assessee cannot depend on the other party to the transaction for making entries in his book. In other words, the assessee cannot say that he did not know how Prakash Pictures had treated the transaction. The Tribunal rightly held that such a lapse cannot be treated as technical error. The second argument that there was no tax effect and hence there was no *mens rea* is equally baseless. If the assessee had included the entire receipts in the year under consideration, he would have ended up paying tax for the present year because even after setting off the brought forward losses, as mentioned earlier, the loss would have been converted into positive income with the inclusion of the balance receipt. Further, by virtue of losses of the assessment year 1977-78 and earlier years being wiped out, the assessee could not have availed of the benefit of further unabsorbed losses during the assessment year 1978-79. Thus, the Tribunal concluded that by not including the entire receipts in the assessment year 1977-78, the assessee was able to thwart his tax liability for two years, namely, assessment years 1977-78 and 1978-79. Thus, by deferring the declaration to the subsequent year, the assessee certainly furnished inaccurate particulars of income for the year under appeal and either avoided or deferred his tax liability.
- A voluntary disclosure in all cases cannot absolve the assessee from the liability to pay penalty.
- The questions forwarded to this Court would have to be answered in favour of the revenue and against the assessee.