

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT  
JAIPUR**

D.B. Income Tax Appeal No. 188 / 2005

Dr. G. D. Tripath, C-125, Vidya Vihar, Pilani.

----Appellant

Versus

Commissioner of Income Tax (III), Statute Circle, Central Revenue  
Building, Jaipur.

----Respondent



For Appellant(s) : Mr. P.K. Kasliwal

For Respondent(s) : Mr. R.B. Mathur

**HON'BLE MR. JUSTICE K.S. JHAVERI**

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Judgment**

**Per Hon'ble Jhaveri J.**

**07/02/2017**

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has allowed the appeal of the department and reversed the finding of the CIT(A) confirmed the order of the Assessing Officer.

2. This Court while admitting the appeal on 02.08.2005 has framed the following substantial question of law:

"Whether the findings of the Tribunal are perverse on levying the penalty under Section 271(1)(c) on Rs.2,88,905/- which

was voluntarily surrendered by the assessee?"

3. The brief facts of this case are that the Assessment in this case was completed u/s 143(3) of the I.T. Act, 1961 on 28-1-2000 at total income of Rs. 5,69,110/- for the A. Yr. 97-98 and penalty proceedings u/s 271 (1)(c) of the I.T. Act, 1961 was initiated for concealment of income by the assessee by way of issue of notice u/s 274 dt. 28-1-2000 and reply was to be received on 28-2-2000. On the fixed date the A/R of the assessee has filed a written reply on 23-2-2000 stating therein that:-

"I have filed my return bonafidely true based on informations and documents available with me and supplied to me by the persons on the site of the construction. I have made the payments as and when demanded by them. I have not concealed any facts and informations and have not filed the incorrect return and particulars in the return. There is no mensrea or malafide on my part.

Even during the course of hearing I requested in person and in writing that I have voluntarily and in goodfaith surrendered the amount and paid the taxes to purchase peace and avoid any litigation. Whatever additions have now been made are purely based on conjectures and have no basis to the facts and circumstances of the case. Therefore, additions are bad-in-law".

4. Counsel for the appellant Mr. Kasliwal has taken us to Section 271(1)(c) and contended that the Tribunal while considering the fact has missed the important question which is required to be considered that the Assessing Officer while issuing the notice has observed as under:

"Assessed. Issue demand notice and challan, charge interest as per rules. Enclosed I.T.-30 i.e. calculation of tax which forms a part of this order. Penalty notice u/s 271(1)(c) of the Income Tax Act, 1961 has also been issued for not furnishing of accurate particulars of income."

5. He has further contended that in view of the decision of **Union of India Vs. Dharmendra Textiles- 306 ITR 277 (SC)**

and the decision of **High Court of Karnataka at Bengalure** in the case of **Commissioner of Income Tax, Central Revenue, Bildings vs. the Income Tax Officer [I.T.A.No. 380 of 2015]**

decided on 23.11.2015 which was affirmed by the Supreme Court in case of **Commissioner of Income Tax & Anr. vs. M/s SSA's**

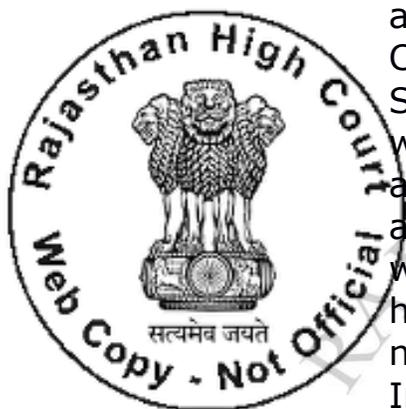
**Emerald Meadows- Special Leave To Appeal (CC No.11485/2016) decided on 05.08.2016.** The Karnataka High

Court in the case of **Commissioner of Income Tax, Central Revenue, Bildings** (supra) in para 3 has observed as under:

"3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division bench of this Court rendered in the case of **Commissioner of Income Tax vs. Manjunatha Cotton And Ginning Factory (2013) 359 ITR 565.**"

6. He has further contended that in view of the fact that the CIT(A) while considering the case of the appellant has held at

page 36 in para 5 as under:



"After considering the issue in totality I am of the view that penalty is leviable only on the figure of Rs.36915. This finding is based on the ratio of Mad. High Court as also of the Hon'ble Supreme Court in the case of Sh. Suresh Chand Mittal in 251 ITR-9 (where the Hon'ble S.C. has upheld the decision of the M.P. High Court in a case where after search revised return showing an extra income was filed and the M.P. High Court had held that the provisions of Section 271(1)(c) were not applicable) wherein even after the most stringent action of the department by declaring the amounts penalty under section 271(1)(c) was not held to be leviable. Similarly how household withdrawals being estimates do not call for levying of concealment penalty. In the above back ground the penalty levied is reduced and the AO is directed to re-calculate it on Rs.36,915/-. The assessee will get the resultant relief."

7. However, counsel for the department Mr. Mathur has contended that in view of the decision of this Court in the case of **Commissioner of Income Tax vs. Mohd. Mohtram Farooqui**, (2003) 259 ITR 132 has held as under:

"11. After this amendment the theory of deemed concealment has been brought in. In case addition is made and the explanation submitted by the assessee is not satisfactory, income added should be treated as deemed concealment.

In the case in hand, the amount of Rs. 5,92,340 was seized from the assessee by the police. He disclosed that part of the amount belongs to his brother, brother-in-law and part of the amount belongs to him. No specific figure of amount has been given how much belongs to his brother, how much belongs to his brother-in-law and how much belongs to him. If what he explained was correct then it is obviously he must be knowing the figure of amount how much belongs to him, how much to his brother and how much to his brother-in-law, jointly

or separately. He has not even given the purpose such as whether the amount was carried for or relates to any specific transaction to pay that amount to any specific person for any transaction.

It is unbelievable that if any person who carries this huge amount does not know the exact purpose to whom the amount is to be paid and for what purpose or in respect of which transaction the amount being carried. Therefore, it left no doubt that explanation furnished by the assessee at the time of seizure is false. The penalty is not automatic but the penalty can be levied on considering the facts on record of a case. It is not necessary that some more material should be brought on record in such case if sufficient material is available on record for penalty. No material on record has been placed to support the case of assessee that department has pressurised him for surrendering income of Rs. 5,92,340.

The assessee simply said that he has surrendered the income to buy peace. That type of explanation any assessee can take but unless it is supported by some material that cannot be accepted. Otherwise if this type of explanation is accepted without any material in support, the provisions of [section 271\(1\)\(c\)](#) will be redundant, and no purpose will be served of the Explanation inserted by amendment in [section 271\(1\)\(c\)](#). It is also not in dispute that amended provisions of [section 271\(1\)\(c\)](#) is applicable in the case in hand. Even counsel of assessee has not suggested in this case what type of material should be brought on record by Income Tax Officer for imposing penalty under [section 271\(1\)\(c\)](#) of the Act, 1961."



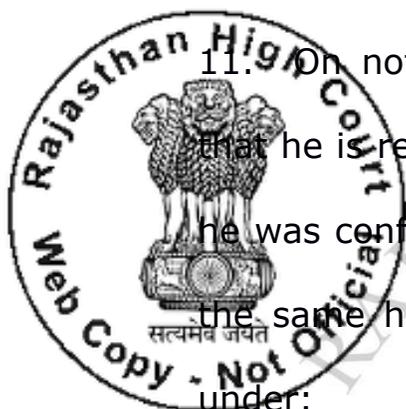
8. Therefore, he has contended that the view taken by the Tribunal is required to be affirmed and the appeal deserves to be dismissed.
9. We have heard counsel for both the sides.
10. Section 271(1)(c) reads as under:

"1. If the [Assessing] Officer or the [Commissioner (Appeals)] [or the [Principal Commissioner or] Commissioner] in the course of any proceedings under this Act, is satisfied that any person

a.....

b.....

c. has concealed the particulars of his income or furnished inaccurate particulars of [such income, or]."



11. On notice or having brought to the notice of the assessee that he is required to be explained in terms of Rs.288905/-. When he was confronted with the return, he filed the revised return and the same has been accepted. The CIT(A) in para 4 has held as under:

"4. The matter has been considered and the records have been examined. The following facts are clear:

1. The assessee had filed return for the A.Y. 97-98 on an income of Rs.1,93,170/- only on 30.6097. while filing the return outstanding liabilities were shown at Rs.2,92,500.

2. There is evidence from file regarding enquiries conducted.

3. Subsequently revised return was filed on 12.09.1997 surrendered an amount of Rs.2,88,905.

4. Assessment order was framed addition the total liabilities shown amounting to Rs.3,25,802 (288905+36915).

5. In appeal this order was confirmed.

12. Taking into consideration the language in true spirit of the provisions of section 271(1)(c), he has reversed the order of the Assessing Officer, however, the Tribunal in para 6 though considering the fact that the assessee has with a view to purchase peace with the revenue and to come out of vexed litigation could

be treated as bonafide has filed the revised return. We are of the opinion that the contention raised by the counsel for the appellant is required to be accepted.

13. In that view of the matter, the issue is answered in favour of the assessee and against the department.

14. The appeal stands allowed.



(VINIT KUMAR MATHUR)J.

(K.S. JHAVERI)J.

Ashish Kr. Yadav/13



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