

**आयकर अपीलीय अधिकरण, 'एक-सदस्य' न्यायपीठ, मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष  
Before Shri Joginder Singh, Judicial Member,**

**ITA No.3119/Mum/2015  
Assessment Year:2009-10**

Mr. Kumar V. Vasani, A-303, 30 <sup>th</sup> Floor, Kalpataru Towers, Akruli Cross Road, Kandivali (East), Mumbai-400101	<b><u>बनाम/</u> Vs.</b>	Income Tax Officer-32(2)(2), C-13, Room No.305A, 3 <sup>rd</sup> Floor, Pratyaksakar Bhavan Bandra Kurla Complex Bandra (East), Mumbai-400051
निर्धारिती / Assessee		राजस्व / Revenue
P.A. No. <b>AABPV7219H</b>		

निर्धारिती की ओर से / Assessee by	Shri R. N. Vasani & Shri V.H. Vasani
राजस्व की ओर से / Revenue by	Ms. Mahua Sarkar-DR

सुनवाई की तारीख / <b>Date of Hearing</b>	<b>30/08/2016</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>01/09/2016</b>

**आदेश / O R D E R**

The assessee is aggrieved by the impugned order dated 30/01/2015 of the Ld. First Appellate Authority, Mumbai. The only ground raised by the assessee pertains to confirming the penalty of Rs.8,96,144/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, the ld. counsel for the assessee, Shri R. N. Vasani along with Shri V.H. Vasani, contended that due to error of the assessee, the accounts, being operated by the assessee in different banks could not be disclosed, to the Revenue, in the return of income, filed by the assessee. It was explained that quantum addition was accepted by the assessee and no further appeal was filed. Reliance was placed upon the decision in Sir Shadilal Sugar General Mills & Ltd. vs CIT (1987) 168 ITR 705 (SC), CIT vs Somany Evergree Knits Ltd. (2013) 352 ITR 592 (Bom.), CIT vs S.L.N. Traders (2)(2012) 341 ITR 235(Karnataka) and CIT vs Careers Education & Infotech Pvt. Ltd. (2011) 336 ITR 257 (P & H).

2.1. On the other hand, the ld. DR, Ms. Mahua Sarkar, strongly defended the penalty order by contending that the assessee deposited cash in the accounts, the source of which was not explained by the assessee, therefore, there is clear cut concealment of income/furnishing of inaccurate particulars of income, thus, the penalty was rightly upheld by the Ld.

Commissioner of Income Tax (Appeal). Reliance was placed upon the decision in MAK DATA P. LTD. vs. COMMISSIONER OF INCOME TAX (2013) 263 CTR (SC) 1 : (2013) 358 ITR 593 (SC) : (2013) 94 DTR (SC) 379.

2.2. I have considered the rival submissions and perused the material available on record. The facts, in brief, are that there was an AIR information with the Assessing Officer that the assessee has deposited cash in saving bank accounts maintained with Axis Bank Ltd. (Rs.13,46,765/-), Sarswat Cooperative Bank Ltd.(Rs.15,01,233/-) and Standard Chartered Bank (Rs.18,87,750/-). It was further notice by the Assessing Officer that none of these accounts were disclosed to the Department in the return filed by the assessee. The assessee was asked to explain the source of these deposits and other deposits made in these bank accounts with documentary evidence. On examination of the submissions of the assessee and on verification of the daily cash summary, the Assessing Officer found that the assessee had a negative cash balance of Rs.22,79,793/-, which could not be explained by the assessee, accordingly, this amount was considered as unexplained cash credit u/s 68 of the Act and added to the total income of the assessee.

2.3. On appeal, before the Ld. Commissioner of Income Tax (Appeal), the factual matrix and the case laws, relied upon by the assessee, were considered and finally,

the stand taken in the assessment order was affirmed. The assessee is in further appeal before this Tribunal.

2.4. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, there is no dispute to the fact that the source of cash deposited by the assessee could not be explained to this extent mentioned in the impugned order, therefore, to this extent, I am of the view that the assessee concealed its income/furnished inaccurate particulars of such income, therefore, the penalty was rightly confirmed.

2.4. So far as, the cases relied upon by the assessee is concerned, I find that in the case of Sir Shadilal Sugar & General Mills Ltd. & Ors. (1987) 168 ITR 705 (SC), there was finding of facts by the Tribunal that there was existence of evidence in support of the claim of the assessee and in that situation, the Tribunal held that there is no concealment as such. In that situation, the Hon'ble Apex Court took a particular view. However, in the present appeal, the assessee right from assessment stage till the stage of the Tribunal, did not adduce any evidence explaining the source of cash deposits, made in the banks and more so did not disclose these accounts in the return of income, therefore, in my humble opinion, being on

different facts the conclusion drawn by Hon'ble Apex Court is not applicable to the facts of the present appeal.

Likewise in the case of CIT vs Somani Evergree Knit Ltd. (2013) 352 ITR 592 (Bom.), there was excess claim of depreciation. Rectification was made by the assessee during assessment proceedings and the mistake was bona fide. In that situation, the Hon'ble jurisdictional High Court took a decision that penalty is not leviable. However, in the present appeal, as discussed above, there is conscious concealment of income by the assessee, therefore, being on different facts, the decision relied upon is not applicable to the facts of the present appeal.

In the case of CIT & Anors. Vs S.L. N. Traders (2012) 341 ITR 235, the explanation of the assessee was accepted by the CIT(A) as well as by the Tribunal. Whereas, in the present appeal, the ld. Assessing Officer, the Ld. Commissioner of Income Tax (Appeal) as well as the Tribunal has not accepted the explanation of the assessee. In that case, the assessee appeared before the Assessing Officer submitting that the assessee could not produced the creditors or confirmation letters and there was no lack of bona fide on the part of the assessee, thus, the facts are different in the present appeal.

Likewise, in the case of CIT vs Careers Education and Infotech Pvt. Ltd. (supra), the assessee surrendered additional income, during survey, to buy peace with the

Department and filed a revised return accordingly. There is a categorical recording of the Tribunal that there was no material to infer concealment of income but that is not so in the present appeal, thus, the cases relied upon by the assessee are not of much help to the assessee.

4. Now, I shall deal with the case, relied upon by the ld. DR in the case of MAK DATA P. LTD. vs. COMMISSIONER OF INCOME TAX (2013) 263 CTR (SC) 1: (2013) 358 ITR 593 (SC) : (2013) 94 DTR (SC) 379. The relevant observation/decision made by Hon'ble Apex Court is reproduced hereunder for ready reference and analysis:-

*"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 :*

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

*(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*

*(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 the total income of such person as a result thereof 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."*

*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 TAXPUNDIT.ORG 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 of Rs.40,74,000/-with a view to avoid 7 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.*

*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 association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer 8 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. 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 in our view, 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 of the Income Tax Act, 1961.*

*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 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.*

*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 meri and is dismissed. There shall be no order as to costs.”*

4.2. In the light of the foregoing discussion and the judicial pronouncements, mentioned hereinabove, I am reproducing hereunder the relevant provision of section 271(1)(c) of the Act for ready reference and analysis:-

*271. (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—*

*xxxxxxxxxxxxxxxxxxxxxxxxxxxx*

*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or*

*xxxxxxxxxxxxxxxxxxxxxxxxxxxx*

*Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—*

- (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 <sup>48</sup>[Principal Commissioner or] Commissioner to be false, or
- (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 the total income of such person as a result thereof 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.

XXXXXXXXXXXXXXXXXXXXX

*Explanation 2.*—Where the source of any receipt, deposit, outgoing or investment in any assessment year is claimed by any person to be an amount which had been added in computing the income or deducted in computing the loss in the assessment of such person for any earlier assessment year or years but in respect of which no penalty under clause (iii) of this sub-section had been levied, that part of the amount so added or deducted in such earlier assessment year immediately preceding the year in which the receipt, deposit, outgoing or investment appears (such earlier assessment year hereafter in this *Explanation* referred to as the first preceding year) which is sufficient to cover the amount represented by such receipt, deposit or outgoing or value of such investment (such amount or value hereafter in this *Explanation* referred to as the utilised amount) shall be treated as the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the first preceding year; and where the amount so added or deducted in the first preceding year is not sufficient to cover the utilised amount, that part of the amount so added or deducted in the year immediately preceding the first preceding year which is sufficient to cover such part of the utilised amount as is not so covered shall be treated to be the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the year immediately preceding the first preceding year and so on, until the entire utilised amount is covered by the amounts so added or deducted in such earlier assessment years.

*Explanation 3.*—Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of [section 153](#) a return of his income which he is required to furnish under [section 139](#) in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of [section 142](#) or [section 148](#) and the Assessing Officer or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person

shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under [section 148](#).

xxxxxxxxxxxxxxxxxxxxxx

*(5) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.*

Considering the provision of the Act, material facts available on record, and the ratio laid down in following cases, it can be concluded that it was a conscious act of the assessee to hide something from the Department.

- I. CIT vs Satish Medical Agencies 277 ITR 394 (All.)
- II. Jyoti Laxman Konkar vs CIT 292 ITR 163 (Bom.),
- III. Deepak Construction Company vs CIT 293 ITR 285(Guj.)
- IV. CIT vs Mahavir Prasad Bajaj 298 ITR 109(Jhar.)
- V. D & H Secheron Electrods Pvt. Ltd. Vs CIT 281 ITR 421 (MP.)
- VI. Shri Nithyakalyani Textiles Ltd. Vs DCIT 282 ITR 154 (Mad.)
- VII. LMP Precision Engineering Company Ltd. Vs DCIT (330 ITR 93) (Guj.)
- VIII. CIT vs Deep Chand 336 ITR 292 (P & H)
- IX. Sathy Industries Corporation vs DCIT 338 ITR 243 (P &H)
- X. B.Damodar V.B. Jewellers vs JCIT 353 ITR 206 (Karna.)

- XI. Standard Hind Company vs CIT (2014) 361 ITR 370 (All.)
- XII. Bajrang Glass Emporium vs CIT (2014) 361 ITR 376 (All.)
- XIII. Indus Engineering Company vs ACIT (2010) 323 ITR 302 (Bom.),

In the light of the foregoing discussion and the ratio laid down in the aforementioned cases, I find that the assessee was well aware that he was having three bank accounts and deposited cash therein, did not disclosed the amounts and also the accounts to the Department, therefore, it was a conscious and deliberate act on the part of the assessee to hide something, consequently, the penalty was rightly imposed. It is also noted that the addition made by the Assessing Officer on this count was accepted by the assessee and no appeal was filed on quantum addition knowing-fully well that there is conscious concealment of facts by the assessee. For imposing penalty u/s 271(1)(c) of the Act, either there should be concealment of income or furnishing of inaccurate particulars of such income. The material facts, available on record clearly indicates that the assessee deliberately concealed his income/furnished inaccurate particulars of such income, therefore, in my view, the penalty was rightly imposed by the Assessing Officer and confirmed by the Ld. Commissioner of Income Tax (Appeal).

Finally, the appeal of the assessee is dismissed.

This order was pronounced in the open in the presence of ld. representative from both sides at the conclusion of the hearing on 30/08/2016.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 01/09/2016

*Shekhar, P.S/निजी सचिव*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT, Mumbai.
4. आयकर आयुक्त / CIT- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai