

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.60 of 2015 (O&M)
Date of decision: 5.11.2015**

**Neme Kumar Jain, Proprietor Mahavir Trading Co., New Grain
Market, Kurukshetra (Haryana).**

.....Appellant

Commissioner of Income Tax, Karnal (Haryana)

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Divya Suri, Advocate and Mr. Sachin Bhardwaj, Advocate
for the appellant-assessee.

Mr. Yogesh Putney, Advocate for the revenue.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.60 and 68 of 2015 as according to the learned counsel for the parties, the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No.60 of 2015.

2. ITA No.60 of 2015 has been preferred by the assessee under Section 260A of the Income Tax Act,1961 (in short, "the Act") against the

order dated 7.11.2014, Annexure A.17 passed by the Income Tax Appellate Tribunal, Chandigarh bench 'A' Chandigarh in ITA No.737/CHD/2014 for the assessment year 2007-08, claiming following substantial question of law:-

“Whether under the facts and circumstances of the case, the action for levy of penalty under section 271(1)(c) is unreasonable on the true and correct interpretation of the decision of CIT vs. Ram Sanahi Gian Chand, (1972) 86 ITR 724 (P&H) on the principle of law qua getting the 'advantage of surrendered amount' credited in books once having fulfilled the test of 'nexus, character'?”

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.60 of 2015 may be noticed. The assessee is engaged in the business of trading of paddy and rice and undertaking custom milling. A survey was conducted on 19.1.2007 under Section 133A of the Act. Statement of the assessee's accountant was recorded wherein there was a surrender of ₹ 14 lacs through the letter and the said amount had been credited in the trading, profit and loss account for the year ending 31.3.2007. The return of income was filed at an amount of ₹ 48,050/- through e-filing. Notice under section 143(2) of the Act was issued to the assessee on 19.6.2008. Written pleadings were submitted by the assessee before the Assessing Officer on 30.11.2009 explaining the credit/surrender alongwith production of complete books of account. Not satisfied with the submissions, the addition of ₹ 14 lacs was made by the Assessing Officer vide order dated 30.12.2009, Annexure A.5 and the income was determined at an amount of ₹ 33,39,240/-. Penalty proceedings under Section 271(1)(c) of the Act were also initiated. Aggrieved by the order, the assessee filed

appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 28.3.2011, the appeal was partly allowed by the CIT(A). However, the ground qua telescoping of the additions in the surrender/credited amount in the books of accounts was rejected being not attributable to cash. The assessee filed appeal before the Tribunal. Vide order dated 28.9.2011, Annexure A.8, the Tribunal dismissed the appeal. Still not satisfied, the assessee filed appeal in this Court being ITA No.87 of 2012 relying upon judgment of this court in **CIT vs. Ram Sanehi Gian Chand**, (1972) 86 ITR 724. Thereafter, notice for levy of penalty proceedings was issued on 13.4.2012 to the assessee. The assessee made written submissions. The Assessing Officer vide order dated 16.5.2012, Annexure A.10 imposed penalty of ₹ 6,53,882/-. Aggrieved by the order, the assessee filed appeal before the CIT(A). In the meantime, ITA No.87 of 2012 filed before this court was dismissed vide order dated 1.8.2013, Annexure A.12. The assessee filed appeal before the Apex Court against the order dated 1.8.2013 which was also dismissed vide order dated 28.10.2013, Annexure A.14. The appeal filed before CIT(A) against the levy of penalty was dismissed vide order dated 5.12.2013, Annexure A.15. Still not satisfied, the assessee filed appeal before the Tribunal which was partly allowed vide order dated 7.11.2014, Annexure A.17 deleting the penalty imposed against the additions made on account of sale of paddy and rice and upholding the penalty qua cash deposits of ₹ 14 lacs. Hence the instant appeals by the assessee.

4. We have heard learned counsel for the parties.

5. After examining the entire material on record, it has been

categorically recorded by the Tribunal that the surrender had been made on account of discrepancies found in the books of account, loose papers, documents etc. maintained by the assessee. The assessee had incorporated the surrendered amount in the profit and loss account but by showing the sale of opening stock at lower price, the income was again reduced to ₹ 48,054/-. The assessee deposited the amount of ₹ 14 lacs in the bank stating that miscellaneous assets were purchased which were later on sold. There was no evidence to show the existence of such assets. The relevant findings on this issue recorded by the Tribunal read thus:-

“14. As far as the penalty on the addition of ₹ 14 lacs is concerned we are unable to agree with the submissions of learned counsel for the assessee. The surrender letter referred to by the learned counsel for the assessee which is available at page 143 of the paper book which reads as under:-

To

The Joint Commissioner of Income tax,

Kurukshetra Range, Kurukshetra

Subject: survey under section 133A(1) of IT Act 1961 conducted at M/s Mahavir Trading Company, Kurukshetra on 19.1.2007.

Respected Madam,

This is in response to the survey conducted at the business premises of M/s Mahavir Trading Company at Kurukshetra on 19.1.2007 and discussed with your goodself.

That during the course of survey proceedings certain discrepancies were found in the books of account, loose papers, stock of various products byproducts and various other records and documents.

That the assessee firm voluntarily surrenders a sum of ₹ 14 lacs (Fourteen lacs) as additional income for the financial

year 2006-07 relevant to assessment year 2007-08 to cover up all alleged discrepancies in the books of account, loose papers, documents, stock, byproducts and other records. On document D2 outside it is written M/s Atyma Ram Sushil Kumar and on document D6 it is written M/s Jain Rice Mill but both pertain to M/s Mahavir Trading Company.

That the surrender of additional income by the assessee is subject to the condition that no penalty proceedings under section 271(1)(c) of the IT Act or under any other section of the IT Act/prosecution proceedings shall be initiated against the assessee on account of any discrepancy in the books of account, loose papers stock, byproducts, yield or any other documents. No further addition or enquiry shall be made on account of any other documents. No further addition or enquiry shall be made on account of any discrepancy in books of account, loose papers, stock byproducts, yield and documents. We will pay taxes by due dates.

Thanking you,

Yours faithfully,

sd/-

M/s Mahavir Trading Company Kurukshetra

The above clearly shows that surrender has been made mainly on account of discrepancies found in the books of account, loose papers, found of various products etc. the cash available was only ₹ 6500/-, therefore, no cash could possibly have been deposited. The assessee though incorporated the surrender amount in the P&L account but by showing the sale of opening stock at lower price, the income was again reduced to ₹ 48,054/-. This clearly shows that the amount surrendered was nullified while filing return. However, later on assessee became wise and deposited the amount of ₹ 14 lacs in the bank and before us it was stated that the assessee purchased miscellaneous assets which were later on sold and the amount

was deposited in the Bank. There is no evidence to show the existence of any miscellaneous assets therefore explanation given by the assessee is totally false. This is not a case of full disclosure of facts and therefore the ratio laid down in the case of CIT vs. Reliance Petroproducts Pvt. Limited 322 ITR 158 is also not applicable. In fact the decision of Hon'ble Punjab and Haryana High Court in case of Ramesh Chander Gupta vs. Income tax Appellate Tribunal and others, 344 ITR 320 where excess stock was found during the survey and addition was made accordingly the penalty under Section 271(1)(c) was held to be leviable. Therefore, in our opinion in view of the facts and decision of Hon'ble Punjab and Haryana High Court in case of Ramesh Chander Gupta vs. Income tax Appellate Tribunal and others (supra) the penalty on these items of income is leviable. Therefore, we set aside the order of learned CIT(A) and direct AO to levy penalty only on ₹ 14 lacs addition.”

6. In the present case, since the assessee itself in its letter of surrender admitted that the the amount of ₹ 14 lacs was surrendered to cover up all alleged discrepancies in the books of account, loose papers, documents, stock, byproducts and other record, the Tribunal was right in upholding the levy of penalty on ₹ 14 lacs addition imposed by the Assessing Officer. Learned counsel for the assessee has not been able to point out any error in the approach of the Tribunal warranting interference by this Court.

7. In *CIT and another vs. Mnanjunatha Cotton and Ginning Factory*, (2013) 92 DTR 111 (Kar.), relied upon by the learned counsel for the appellant-assessee, it was observed by the Karnataka High Court that merely because the assessee agreed for addition and accordingly assessment order was passed on the basis of addition and when the assessee had paid

the tax and the interest thereon, in the absence of any material on record to show the concealment of income, it could not be inferred that the said addition was on account of concealment so as to levy penalty under Section 271(1)(c) of the Act. There is no quarrel with the proposition of law. However, in the present case, the position being different as the appellant while surrendering ₹ 14 lacs had admitted the discrepancies in the books of account, loose papers, documents, stock, by-products etc., he cannot derive any benefit from the said decision.

8. Again in *Ram Sanehi Gian Chand's* case (supra) on which reliance had been placed by the assessee, it was observed by this Court as under:-

“15. In our opinion as the income-tax authorities made additions to the assessable income of the assessee in the previous year as income from undisclosed sources, the assessee is entitled to take advantage of those added incomes to explain the source of what is considered by the income-tax department as income from undisclosed sources, because every other explanation tendered by the assessee was rejected. To say the least, it is fair and equitable to allow him to do so, because the assessee has already paid the necessary income-tax on that amount.”

This case was not relating to penalty imposed under section 271(1)(c) of the Act. It was relating to the issue of taking advantage by the assessee of the past intangible additions in its income while explaining the current income assessed from undisclosed sources, which is not the situation here.

9. In *MAK Data P.:Limited vs. CIT*, (2013) 358 ITR 593 (SC), relied upon by the learned counsel for the revenue, the Apex Court while delving into identical situation upheld the levy of penalty on the assessee

under Section 271(1)(c) of the Act. It was recorded as under:-

“8. Assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- 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\(1\)\(c\)](#) 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.

9. 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 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.

10. 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.”

10. In view of the above, there is no error in the finding recorded by the Tribunal. Thus, no substantial question of law as claimed arises and the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

November 05, 2015
'gs'

(Hari Pal Verma)
Judge