

Penalty not absolved in case of voluntary disclosure of additional income in a revised return filed after survey proceedings

March 8, 2018

In brief

In a recent decision,¹ the Delhi High Court (HC) following the decision of the Supreme Court (SC)² held that the voluntary disclosure of additional income in a revised return of income filed after survey proceedings would not absolve the taxpayer from levy of penalty under section 271(1)(c) of the Income-tax Act, 1961 (the Act).

In detail

Facts

- A survey was conducted at the business premises of a taxpayer who had disclosed certain additional income during the survey proceedings and subsequently, filed a revised return of income (ROI) declaring the additional income.
- The tax officer (TO) completed the assessment proceedings on the revised ROI and levied the penalty under section 271(1)(c) of the Act stating that the taxpayer had concealed the income and filed inaccurate particulars.
- The aggrieved taxpayer appealed before the Commissioner of Income-

tax (Appeals) [CIT(A)] contending that the TO had not gathered any incriminating documents or evidences during the survey proceedings, and to avoid further proceedings, the taxpayer disclosed the income.

- The CIT(A) rejected the taxpayer's contentions. However, the Income-tax Appellate Tribunal (Tribunal) provided relief to the taxpayer relying on Delhi HC decision³.
- Aggrieved by the Tribunal's order, the Revenue preferred an appeal before the HC.

Issue before the High Court

Whether the Tribunal was right in holding that the penalty imposed by the TO

under section 271(1)(c) of the Act was not leviable?

Taxpayer's contention

Mere disclosure of additional income consequent to survey proceedings by filing a revised ROI could not be a ground for the Revenue to levy penalty for concealment of income. No material evidence or information was gathered during the survey proceedings in respect of additional income disclosed in the revised ROI. In support of its contentions, reliance was placed on various judicial precedents.⁴

Revenue's contention

The taxpayer had not disclosed the additional income in its ROI until the completion of survey proceedings. Additional income was admitted by taxpayer only in its revised

¹ ITA 219/2017 order dated 20 February, 2018

² MAK Data Private Limited v. CIT [2013] 358 ITR 593 (SC)

³ CIT v. SAS Pharmaceuticals [2011] 335 ITR 259 (Delhi)

⁴ CIT v. SAS Pharmaceuticals (2011) 335 ITR 259 (Delhi); CIT v. Mohandas Hassanand (1983) 141 ITR 203 (Delhi);

ROI, and not in the original. In support of its contentions, reliance was placed on various judicial precedents.⁵

High Court's decision

- HC observed that the position of law laid down by the Delhi HC in the case of SAS Pharmaceuticals³, relied by the Tribunal, had been reversed by the ruling of the SC in the case of MAK Data².
- HC observed that the plea of the taxpayer regarding voluntary disclosure of income and not providing any explanation regarding the nature of income or its source would no longer hold good pursuant to the SC's⁷ decision.
- HC observed that the Revenue should not be really concerned with the statement of the taxpayer like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc.
- HC reinforced the views of the TO and the CIT(A) that filing of the revised ROI was an afterthought of the taxpayer, influenced by the admission made during the course of survey proceedings.
- Therefore, the HC held that the taxpayer could not be absolved from the levy of penalty as the taxpayer had failed to substantiate its *bona fide* in disclosing all the facts material.

The takeaways

- The HC reaffirmed the SC's decision that the plea of the taxpayer like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. need not be considered by Revenue.
- Voluntary disclosure of additional income during the course of survey proceedings to buy peace of mind or to avoid further proceedings would not immune the taxpayer from the levy of penalty.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

⁵ ACIT v. Jeevan Lal Sah [1994] 205 ITR 244 (SC), CIT v. Mussadilal Ram Bharose [1987] 165 ITR 14 (SC) and CIT v. Zoom

Communication (P.) Limited [2010] 327 ITR 510 (Delhi)

Our Offices

Ahmedabad

1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th
Floor, Road No. 10, Banjara Hills,
Hyderabad – 500034,
Telangana
+91-40 44246000

Gurgaon

Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Bengaluru

6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Kolkata

56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata – 700 091,
West Bengal
+91-033 2357 9101/
4400 1111

Pune

7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

Chennai

8th Floor
Prestige Palladium Bayan
129-140 Greams Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Mumbai

PwC House
Plot No. 18A,
Guru Nanak Road (Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

For more information

Contact us at
pwctrs.knowledgemanagement@in.pwc.com

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 223,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

In India, PwC has offices in these cities: Ahmedabad, Bengaluru, Chennai, Delhi NCR (Gurgaon), Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit www.pwc.com/in

PwC refers to the PwC International network and/or one or more of its member firms, each of which is a separate, independent and distinct legal entity. Please see www.pwc.com/structure for further details.

©2018 PwC. All rights reserved

Follow us on:



For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

© 2018 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.