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is further held that deduction under section 16(i) of the Act is admissible under the head 'salaries' and no separate deduction on account of expenditures is permissible.

(54) In the result, the question is answered in favour of the Revenue and against the assessee.

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**S.C.K.**

*Before N.K. Agrawal, J.*

INCOME TAX OFFICER, KAITHAL,—*Petitioner*

*versus*

ACHHPAL SINGH,—*Respondent*

*Crl. M.No. 9059-M of 1991*

The 9th Oct., 1998

*Income Tax Act, 1961—Ss. 250, 254, 271, 273, 273-A and 279—Penalty imposed on assessee for concealment of income—Assessee filing appeal u/s 254—Commissioner reducing penalty—Prosecution of assessee for concealment of income.*

*Held*, that this was not a case where the assessee filed any application before the Commissioner, seeking reduction or waiver of the amount of penalty imposed upon him by the Assessing Officer. The assessee had, on the other hand, filed an appeal which was heard by the Appellate Assistant Commissioner and the order was passed under Section 250 of the Act. In this view of the matter, sub section (1A) of Section 279 is not attracted at all inasmuch as it was not a case of reduction or waiver of the amount of penalty by the Commissioner in exercise of his power under Section 273A of the Act.

(Para 13)

R.P. Sawhney, Senior Advocate with Mr. Rajesh Bindal,  
Advocate, for the Petitioners.

Nemo for the Respondent.

**ORDER**

*N.K. Agarwal, J.*

(1) A Criminal complaint was filed in the Court of Chief Judicial Magistrate, Kurukshetra, by R.K. Kuchhal, Income-tax

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Officer, Kaithal; against Achhpal Singh. It was alleged that the accused, being an assessee under the Income-tax Act, 1961, (for short, "the Act"), concealed income of Rs. 40,000/- in the assessment year 1982-83. Offences under Section 276C and 277 of the Act were mentioned in the complaint.

(2) The accused-assessee purchased a Matador Van. The Assessing Officer, during the course of assessment proceedings, sought the assessee's explanation regarding the source of investment. The assessee could not give satisfactory explanation. The Assessing Officer, after charging income tax on Rs. 40,000 as unexplained income of the assessee, proceeded to impose penalty also for the concealment of income. Penalty of Rs. 15,000 was imposed under Section 271 (1) (C) of the Act.

(3) The assessee filed an appeal against the assessment order, Challenging the addition of Rs. 40,000 to his income. The Appellate Assistant Commissioner reduced the addition of Rs. 25,000. The Income-tax Appellate Tribunal affirmed the order of the Appellate Assistant Commissioner.

(4) The learned Chief Judicial Magistrate, Kurukshetra, recorded the statement of S.S. Thind, Income-tax Officer and also of R.K. Kuchhal, the complainant. The learned Magistrate thereafter, discharged the assessee-accused on the ground that, after the reduction of the amount of penalty in appeal, prosecution could not proceed any further in view of the provisions contained in subsection (1A) of Section 279 of the Act.

(5) The Complainant filed a revision petition against the discharge order dated August 11, 1990 passed by the Chief Judicial Magistrate, Kurukshetra. The learned Sessions Judge, Kurukshetra, by order dated February 16, 1991, dismissed the revision petition.

(6) This petition has been filed under Section 482, Code of Criminal Procedure, challenging the order of discharge passed by the Chief Judicial Magistrate, Kurukshetra.

(7) Shri R.P. Sawhney, learned senior counsel for the petitioner, has been heard. Shri J.K. Goel, counsel for the respondent, has not chosen to appear.

(8) Shri R.P. Sawhney has argued that the learned Chief Judicial Magistrate has wrongly discharged the accused taking an

incorrect view of Section 279 (1A) of the Act. His contention is that, under the aforesaid provision, prosecution would terminate if the amount of penalty imposed by the Assessing Officer is reduced or waived by an order under Section 273A of the Act. In the case of the accused-assessee, amount of penalty was not reduced or waived by the Commissioner of Income-tax under Section 273A of the Act.

(9) It would be relevant to read sub section (1) of Section 273A and also sub section (1A) of Section 279 of the Act :—

**SECTION 273A :**

**POWER TO REDUCE OR WAIVE PENALTY, ETC., IN CERTAIN CASES :**

(1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise,—

- (i) reduce or waive the amount of penalty imposed or imposable on a person under clause (i) of sub-section (1) of Section 271 for failure, without reasonable cause, to furnish the return of total income which he was required to furnish under sub-section (1) of Section 139; or
- (ii) reduce or waive the amount of penalty imposed or imposable on a person under clause (iii) of sub-section (1) of Section 271; (or)
- (iii) reduce or waive the amount of interest paid or payable under sub-section (8) of Section 139 or Section 215 or Section 217 or the penalty imposed or imposable under Section 273,

If he is satisfied that such person—

- (a) in the case referred to in clause (i), has, prior to the issue of a notice to him under sub-section (2) of Section 139, voluntarily and in good faith made full and true disclosure of his income.
- (b) in the case referred to in clause (ii), has, prior to the detection by the (Assessing) Officer, of the concealment of particulars of income or of the

inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars;

- (c) in the case referred to in clause (iii), has, prior to the issue of a notice to him under sub-section (2) of Section 139, or where no such notice has been issued and the period for the issue of such notice has expired, prior to the issue of notice to him under Section 148, voluntarily and in good faith made full and true disclosure of his income and has paid the tax on the income so disclosed.

and also has, in the case referred to in clause (b), co-operated in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year.

*Explanation*—For the purposes of this sub-section, a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of clause (c) of sub-section (1) of Section 271.”

(1)           XX    XX    XX    XX  
              XX    XX    XX    XX

- (1A) A person shall not be proceeded against for an offence under Section 276C or Section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of Section 271 has been reduced or waived by an order under Section 273A.

(2)           XX    XX    XX    XX

(3)           XX    XX    XX    XX

(10) On a perusal of the aforesaid provisions, it is apparent that sub-section (1A) of Section 279 comes into play where penalty imposed on an assessee under Section 271 is either reduced or waived by an order under Section 273A of the Act. In the case of the present assessee, order by the Appellate Assistant Commissioner was passed

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on assessee's appeal under Section 250 of the Act. Further appeal filed before the Tribunal also came to be disposed of under Section 254 of the Act. Thus, neither the appellate order passed by the Appellate Assistant Commissioner nor the order by the Income-tax Appellate Tribunal was an order under Section 273A of the Act.

(11) An order under Section 273A is passed by the Commissioner of Income-tax and the amount of penalty is reduced or waived where the Commissioner is satisfied that the assessee had, prior to the detection of concealment of particulars of income, made voluntarily and in good faith, full and true disclosure of the particulars of income.

(12) The order of the Appellate Assistant Commissioner, passed in the assessee's appeal, is not in the nature of an order passed by the Commissioner after the satisfaction as mentioned above. The first appellate order was passed under Section 250 and the second appellate order was passed under Section 254 of the Act.

(13) In view of the above discussion, the conclusion arrived at by the learned Chief Judicial Magistrate is found to be erroneous and unsustainable. This was not a case where the assessee filed any application before the Commissioner, seeking reduction or waiver of the amount of penalty imposed upon him by the Assessing Officer. The assessee had, on the other hand, filed an appeal which was heard by the Appellate Assistant Commissioner and the order was passed under Section 250 of the Act. In this view of the matter, sub-section (1A) of Section 279 is not attracted at all inasmuch as it was not a case of reduction or waiver of the amount of penalty by the Commissioner in exercise of his power under Section 273A of the Act.

(14) A similar matter was once examined by the Kerala High Court in *Friends Union Oil Mills and Others v. Income-tax Officer and Others* (1). There also, penalty was reduced by the Appellate Tribunal and not by the Commissioner under Section 271 (4A) of the Act. It was, therefore, held that the benefit conferred by Section 279 (1A) was not available to the assessee.

(15) Similar view has been taken by the Allahabad High Court in *Dr. D.N. Munshi v. N.B. Singh*(2). There also, the assessee had been prosecuted under Section 277 of the Act. He was discharged

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(1) 106 I.T.R. 517

(2) 112 I.T.R. 173

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by the trial court on the ground that there was a bar to the institution or continuance of a prosecution against the assessee under Section 279(1A) of the Act if the Commissioner waived the penalty imposable on the assessee under sub Section (4A) of Section 271. It was noticed by the court that the assessee's appeal against the imposition of penalty had been allowed by the Income-tax Appellate Tribunal, which did not act under Section 271(4A). The order of discharge was, therefore, held to be not sustainable.

(16) In the result the present petition is, allowed and the order of Learned Chief Judicial Magistrate, Kurukshetra, as well as the order of the learned Sessions Judge are set aside. The matter is remitted to the Chief Judicial Magistrate, Kurukshetra with a direction to proceed further in accordance with law in the matter from the stage at which it was on the date of the order of discharge.

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**S.C.K.**

*Before V.S. Aggarwal, J.*

STATE OF PUNJAB,—Petitioner

*versus*

HARI DASS & ANOTHER,—Respondents

CWP No. 11791 of 1996

The 17th November, 1998

*Constitution of India, 1950—Arts. 226/227—Industry, Building and Roads Department not shown to be performing purely sovereign functions of the State—Is held to be an industry—Dominant nature test as laid down by the Supreme Court go against petitioner because welfare activities or economic activities have not been undertaken by the Government.*

*Held, that it has not been shown that functions purely were sovereign. The Building and Roads Department, once it is not shown to be performing purely sovereign functions of the State, therefore, was rightly held to be an industry. The dominant nature test as laid down by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa and others, 1978(2)*