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SRI T. ASHOK PAI  
v.  
COMMISSIONER OF INCOME TAX, BANGALORE

MAY 18, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Income Tax Act, 1961:*

C

*s. 271(1)(c)—Filing of revised returns by assessee furnishing of all requisite particulars when asked for better particulars of investment—Penalty for concealment of income—Imposition of—Held: Furnishing of an assessment of value of the property is not furnishing of inaccurate particulars to attract s 271(1)(c)—Mere omission or negligence would not constitute a deliberate act of suppressio veri or suggestio falsi—Also not a case where penalty has been imposed for breach of contravention of commercial statute—Thus, order of High Court that penalty under section 271(1)(c) was exigible, set aside.*

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*s. 271(1)(c) explanation 1 (a)—Penalty for concealment of income—Burden of proof—Held: Lies on the Department—It is to arrive at finding that the explanation offered by assessee was a false one, not bonafide and that he has not disclosed all the facts material to the computation of his income—If explanation given by assessee regarding the mistake is treated to be bona fide and it is found that he had acted on the basis of wrong legal advice, failure to discharge his burden would not arise.*

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*Reference—Finding of fact that assessee not guilty of deliberate concealment of his income—Finding of fact not challenged as being perverse before High Court—Held: High Court must accept the finding—Income tax Act, 1961.*

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**Appellant-individual apart from income by way of salary was having shares of profits in various firms and also income from dividend and interest. A professional group filed returns of income on behalf of appellant-assessee. Respondent called for better particulars of investments by appellant. Revised returns were filed. Application was filed for settlement of tax due which was rejected. Appellant then filed second revised return and the same was accepted. However, proceedings for imposition of penalty in terms of section 271(1)(c)**

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of the Income Tax Act, 1961 was initiated. Appellant contended that he had acted *bona fide* as tax affairs were looked after by professional group. Tribunal held that on discovery, some omission or some wrong statement in the original return is found, a penalty proceeding for concealment of any particulars of income or furnishing inaccurate particulars of such income under section 271(1)(c) of the Act is not attracted. Reference was filed. High Court held that in the facts and circumstances of the case the tribunal was not right in holding that penalty u/s 271(1)(c) was not exigible in the instant case. Hence the present appeal.

Allowing the appeal, the Court

**HELD :** 1.1 Reference of the question to the High Court was general in nature. No question was referred as to whether the finding of the Tribunal was perverse or not. Existence of *mens rea* is essentially a question of fact. The Tribunal alone, as the highest authority empowered to determine the question of fact, would be entitled to go thereinto. However, hasten to add that the same would not mean that the High Court will have no jurisdiction in this behalf. High Court, should not ordinarily disturb the finding of fact arrived at by the Tribunal. Question of law should generally arise only accepting the finding of fact to be correct. [Para 9] [562-C, D]

*Commissioner of Income-Tax v. Mukundray K. Shah* 2007 (290) ITR 433; *K. Ravindranathan Nair v. Commissioner of Income-Tax*, (2001) 247 ITR 178 and *Century Flour Mills Ltd. v. Commissioner of Income Tax*, (2001) 247 ITR 276, referred to.

1.2. The term 'inaccurate particulars' is not defined. Furnishing of an assessment of value of the property may not by itself be furnishing of inaccurate particulars. Even if the explanations are taken recourse to, a finding has to be arrived at having regard clause (a) of Explanation 1 that the Assessing Officer is required to arrive at a finding that the explanation offered by an assessee, in the event, he offers one was false. He must be found to have failed to prove that such explanation is not only *bona fide* but all the facts relating to the same and material to the income were not disclosed by him. Thus, apart from his explanation being not *bona fide*, it should be found as of fact that he has not disclosed all the facts which was material to the computation of his income. If an explanation given by the assessee with regard to the mistake committed by him has been treated to be *bona fide* and it has been found as of fact that he had acted on the basis of wrong legal advice, the

A question of his failure to discharge his burden in terms of explanation appended to section 271(1)(C) of the Income Tax Act, 1961 would not arise. [Paras 13 and 16] [563-G; 564-A, B; 563-B, C]

1.3. The explanation must be preceded by a finding as to how and as to in what manner he furnished the particulars of his income. It is beyond any doubt or dispute that for the said purpose the Income Tax Officer must arrive at its satisfaction in this behalf. [Para 17] [564-B, C]

*Commissioner of Income Tax v. Ram Commercial Enterprises Ltd.*, 246 ITR 568 and *Diwan Enterprises v. Commissioner of Income Tax*, 246 ITR 571, referred to.

1.4. The order imposing penalty is quasi-criminal in nature and, thus, burden lies on the Department to establish that the assessee had concealed his income. Since burden of proof in penalty proceedings varies from that in the assessment proceeding, a finding in an assessment proceeding that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceeding constitute good evidence in the penalty proceeding. Thus, in the penalty proceedings, the authorities must consider the matter afresh as the question has to be considered from a different angle. [Para 18] [564-C, D, E]

1.5. The more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution. Thus, the omission of the word "deliberate" may not be of much significance. [Paras 19 and 20] [564-E, F]

*P.N. Krishna Lal and Ors. v. Govt. of Kerala and Anr.*, [1995] Supp 2 SCC 187, referred to.

1.6. Section 271(1)(c) of the Act remains a penal statute. Rule of strict construction shall apply thereto. Ingredients of imposing penalty remains the same. The purpose of the legislature that it is meant to be deterrent to tax evasion. [Para 21] [564-G]

1.7. 'Concealment of income' and 'furnishing of inaccurate particulars' carry different connotations. Concealment refers to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of *suppressio veri or suggestio falsi*. [Para 22] [564-H; 565-A]

*Dilip N. Shroff v. Joint Commissioner of Income-Tax, Mumbai, Civil Appeal arising out of SLP(c) No.26831/2004; Commissioner of Income-Tax v. Jeevan Lal Sah, (1994) 205 ITR 244; K.C. Buildings and Anr. v. Assistant Commissioner of Income Tax, (2004) 265 ITR 562 = [2004] 5 SCC 731; M/s. Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi, (2007) 2 SCALE 612; Commissioner of Income Tax, Indore v. Suresh Chandra Mital, [2003] 11 SCC 729 and M. Janardhana Rao v. Joint Commissioner of Income Tax, [2005] 2 SCC 324, referred to.*

1.8. It is not a case where penalty has been imposed for breach of contravention of a commercial statute where lack of or intention to contravene or existence of *bona fide* may not be of much importance. It is also not a case where penalty is mandatorily impossible. Therefore, it was not a case where the enabling provision should have been invoked.

[Para 29] [567-D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2747 of 2007.

From the Judgment and Order dated 29.9.2005 of the High Court of Karnataka at Bangalore in ITRC No. 492 of 1998.

G. Sarangan, Sr. Adv., Sanjay Kunur, N.N. Keshwani for the Appellant.

B. Dutta, A.S.G., T.A. Khan, Arunav Patnaik and B.V. Balaram Das for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. The assessee is in appeal before us aggrieved by and dissatisfied with a judgment dated 29.9.2005, passed by a Division Bench of the Karnataka High Court in ITRC No.492 of 1998 whereby and whereunder answer to the following question was rendered in the negative.

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that penalty u/s.271(1)(C) was not exigible in the present case?”

3. Shorn of all unnecessary details the fact of the matter is as under :

Appellant is an individual. He is an engineering graduate. Apart from

A his income by way of salary, he was having shares of profit of a number of firms besides income from proprietorship business. He has also earned income from dividend and interest. The banker of the assessee was the Syndicate Bank. A power of attorney was given by the appellant in its favour. The shares of the companies which the appellant owned were lodged with and in custody of the said Bank. Under his instructions, the Bank used to purchase shares of various companies and kept with it the physical possession thereof. It has also sold the shares of the appellant and delivered the same to the brokers or the parties and also used to pay or receive the sale proceeds and deposit the same in the bank account. The said arrangement continued for a number of years in the past.

C Tax matters of the appellant were being looked after for a number of years by the Law Agency Division of the Syndicate Bank, Manisal, which was authorised to file the returns of income before the tax authorities representing the assessee herein. For the assessment year 1985-86 the return of income on behalf of the appellant was filed on 13.2.1989. Respondent, D however, being not satisfied with the return, called for better particulars of investments made by the appellant, whereupon a revised return was filed on 12.1.1990 furnishing all the requisite particulars to the Department. An application was filed by him before the Settlement Commission on or about 17.1.1990 for settlement of the taxes due which was, however, rejected by an order dated 26.9.1990. Appellant, thereafter, filed a second revised return, upon which assessment was made by the Assessing Officer. The said revised return was accepted by the Assessing Officer. However, a proceedings for imposition of penalty in terms of Section 271(1)(C) of the Income Tax Act was initiated. In the cause shown by the appellant a contention was raised that he had acted *bona fide* as the tax affairs were being looked after by the professional group working with the Syndicate Bank. The said contention was not accepted by the Assessing Authority.

4. The Income Tax Appellate Tribunal, however, considered the entire materials brought on records and *inter alia* opined :

- G (1) When on discovery, some omission or some wrong statement in the original return is found, a penalty proceeding for concealment of any particulars of income or furnishing inaccurate particulars of such income as contemplated under Section 271(1)(C) of the Income Tax Act may not be attracted.
- H (2) The revised return having been accepted by the Department and

the penalty having not been imposed with reference to the original return filed by assessee, he cannot be considered to be guilty of concealment of income. A

- (3) The fault, if any, was with his tax counsel and even the said tax counsel viz. the Syndicate Bank, cannot be said to have acted in a *mala fide* manner in preparing the return of income of the assessee wrongly. The *bona fides* of the assessee are proved by the facts and circumstances of the case. B

5. A reference was made to the High Court at the instance of the revenue in respect of the following question :

“Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that penalty u/s. 271(1)(C) was not exigible in the present case?” C

6. The High Court compared the returns filed by the appellant under the Income Tax Act and the Wealth Tax Act and arrived at the following decision: D

“The principal is responsible for all the act done by the agent. That apart, in the case on hand there is no material to show that the agent has acted in excess of his authority or in disobedience of the authority given by the principal. The stand taken by the Bank manifestly makes it clear to us that they prepared the return of income on the basis of information furnished by the assessee. The assessee is an engineer and a tax payee for a number of years cannot contend that he signed the return of income by believing his power of attorney holder. This contention of the assessee cannot be believed for the reason that in his revised return dated 12.1.1990 again declared a loss of Rs.1,04,531/- and did not admit the capital gains and other income. The first appellate authority rightly holds that if the explanation of assessee is accepted then every tax evader could take shelter by shifting the blame on his clerk and accountants who invariably prepare the return for them. The contention of the assessee that because of the negligence on the part of the Bank the mistake of concealment has crept in is not acceptable.” E F G

7. Mr. G. Sarangan, learned senior counsel appearing on behalf of the appellant, would submit that the Tribunal having arrived at a finding of fact that the appellant was not guilty of deliberate concealment of his income and thus, having no *mens rea* in this behalf, the impugned judgment cannot be H

**A** sustained. In any event, it was urged, no specific question having been referred as to whether the findings of the Tribunal are perverse or not, the High Court committed a manifest error in differing with the findings of fact arrived at by the Tribunal.

**B** 8. Mr. B. Datta, learned Additional Solicitor General appearing on behalf of the respondent, on the other hand, would submit that the Assessing Authority as also the Commissioner of Income Tax having arrived at a finding of fact that the appellant was guilty of deliberate concealment of his income, the Tribunal was not correct in interfering therewith.

**C** 9. Reference of the question to the High Court as noticed hereinbefore was general in nature. No question was referred as to whether the finding of the Tribunal was perverse or not. Existence of *mens rea* is essentially a question of fact. The Tribunal alone, as the highest authority empowered to determine the question of fact, would be entitled to go thereinto. We may, however, hasten to add that the same would not mean that the High Court **D** will have no jurisdiction in this behalf. The High Court, it is well known, should not ordinarily disturb the finding of fact arrived at by the Tribunal. Question of law should generally arise only accepting the finding of fact to be correct.

**E** 10. In *Commissioner of Income-Tax v. Mukundray K. Shah* (2007) 290 ITR 433, this Court observed thus :

**F** “The above two judgments indicate that the question as to whether payment made by the company is for the benefit of the assessee is a question of fact. In this case, the Tribunal has concluded that the payment routed through MKF and MKI was for the benefit of the assessee. This was a finding of fact. It was not perverse. Therefore, the High Court should not have interfered with the said finding.”

11. In *K. Ravindranathan Nair v. Commissioner of Income-Tax* (2001) 247 ITR 178, a three-Judge Bench of this Court opined :

**G** “The only jurisdiction of the High Court in a reference application is to answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise.”

**H**

12. Yet again in *Century Flour Mills Ltd. v. Commissioner of Income-Tax* (2001) 247 ITR 276, it was observed by this Court : A

“We have perused the order of the High Court and heard learned counsel and are in no doubt that the High Court was right. The Appellate Tribunal having arrived at the finding of concealment of income on the basis of the material on record, no question of law arose, reference of which could be called for.” B

13. It is, therefore, trite that if an explanation given by the assessee with regard to the mistake committed by him has been treated to be *bona fide* and it has been found as of fact that he had acted on the basis of wrong legal advice, the question of his failure to discharge his burden in terms of explanation appended to Section 271(1)(C) of the Income Tax Act would not arise. C

14. In *Dilip N. Shroff v. Joint Commissioner of Income-Tax, Mumbai*, (Civil Appeal Arising out of SLP (C) No.26831/2004) delivered today, this Court observed. D

“The expression “conceal” is of great importance. According to Law Lexicon, the word “conceal” means:

“to hide or keep secret. The word “conceal” is con + celare which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the income tax authorities.” E

In Webster’s Dictionary, “inaccurate” has been defined as: F

“not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript.”

15. It signifies a deliberate act of omission on the part of the assessee. Such deliberate act must be either for the purpose of concealment of income or furnishing of inaccurate particulars. G

16. The term ‘inaccurate particulars’ is not defined. Furnishing of an assessment of value of the property may not by itself be furnishing of inaccurate particulars. Even if the explanations are taken recourse to, a finding H

A has to be arrived at having regard clause (a) of Explanation 1 that the Assessing Officer is required to arrive at a finding that the explanation offered by an assessee, in the event, he offers one was false. He must be found to have failed to prove that such explanation is not only not *bona fide* but all the facts relating to the same and material to the income were not disclosed by him. Thus, apart from his explanation being not *bona fide*, it should be found as of fact that he has not disclosed all the facts which was material to the computation of his income.

C 17. The explanation having regard to the decision of this Court must be preceded by a finding as to how and as to in what manner he furnished the particulars of his income. It is beyond any doubt or dispute that for the said purpose the Income Tax Officer must arrive at its satisfaction in this behalf. [See *Commissioner of Income Tax v. Ram Commercial Enterprises Ltd.*, 246 ITR 568 and *Diwan Enterprises v. Commissioner of Income Tax*, 246 ITR 571].

D 18. The order imposing penalty is quasi-criminal in nature and, thus, burden lies on the department to establish that the assessee had concealed his income. Since burden of proof in penalty proceedings varies from that in the assessment proceeding, a finding in an assessment proceeding that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceeding constitute good evidence in the penalty proceeding. In the penalty proceedings, thus, the authorities must consider the matter afresh as the question has to be considered from a different angle.

F 19. It is now a well-settled principle of law that the more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the prosecution. [See *P.N. Krishna Lal and Ors. v. Govt. of Kerala and Anr.*, [1995] Supp 2 SCC 187].

20. The omission of the word "deliberate", thus, may not be of much significance.

G 21. Section 271(1)(c) remains a penal statute. Rule of strict construction shall apply thereto. Ingredients of imposing penalty remains the same. The purpose of the legislature that it is meant to be deterrent to tax evasion is evidenced by the increase in the quantum of penalty, from 20% under the 1922 Act to 300% in 1985.

H 22. 'Concealment of income' and 'furnishing of inaccurate particulars'

carry different connotations. Concealment refers to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of *suppressio veri or suggestio falsi*. A

23. We may notice that in *Commissioner of Income-Tax v. Jeevan Lal Sah*, (1994) 205 ITR 244, this Court dealt with the amendment of Section 271(1)(C) made in the year 1964 to hold : B

“Even after the amendment of 1964, the penalty proceedings, it is evident, continue to be penal proceedings. Similarly, the question whether the assessee has concealed the particulars of his income or has furnished inaccurate particulars of his income continues to remain a question of fact. Whether the Explanation has made a difference is-while deciding the said question of fact the presumption created by it has to be applied, which has the effect of shifting the burden of proof. The entire material on record has to be considered keeping in mind the said presumption and a finding recorded.” C

24. The question came for consideration of this Court yet again in *K.C. Builders and Anr. v. Assistant Commissioner of Income-Tax* (2004) 265 ITR 562 = [2004] 5 SCC 731, wherein it was held : D

“One of the amendments made to the abovementioned provisions is the omission of the word ‘deliberately’ from the expression ‘deliberately furnished inaccurate particulars of such income’. It is implicit in the word ‘concealed’ that there has been a deliberate act on the part of the assessee. The meaning of the word ‘concealment’ as found in Shorter Oxford English Dictionary, third edition, Volume I, is as follows: E

‘In law, the intentional suppression of truth or fact known, to the injury or prejudice of another.’ F

The word ‘concealment’ inherently carried with it the element of *mens rea*. Therefore, the mere fact that some figure or some particulars have been disclosed by itself, even if it takes out the case from the purview of non-disclosure, it cannot by itself, even if it takes out the case from the purview of non-disclosure, it cannot by itself take out the case from the purview of non-disclosure, it cannot by itself take out the case from the purview of furnishing inaccurate particulars. Mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate H

A particulars of income unless and until there is some evidence to show  
 B or some circumstances found from which it can be gathered that the  
 omission was attributable to an intention or desire on the part of the  
 assessee to hide or conceal the income so as to avoid the imposition  
 of tax thereon. In order that a penalty under Section 271(1)(iii) may be  
 imposed, it has to be proved that the assessee has consciously made  
 the concealment or furnished inaccurate particulars of his income.”

25. The said principle has been reiterated in *M/s Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi* [2007] 2 SCALE 612, where it was held :

C “24 Section 271 of the Act is a penal provision and there are well  
 established principles for the interpretation of such a penal provision.  
 Such a provision has to be construed strictly and narrowly and not  
 widely or with the object of advancing the object and intention of the  
 legislature.”

D 26. Referring to a large number of decisions, it was furthermore observed:

“27. Every statutory provision for imposition of penalty has two  
 distinct components:

- E (i) That which lays down the conditions for imposition of penalty.  
 (ii) That which provides for computation of the quantum of penalty.

F Section 271(1)(c) and clause (iii) relate to the conditions for imposition  
 of penalty, whereas, on the other hand, Explanation 4 to Section  
 271(1)(c) relates to the computation of the quantum of penalty.

G 28. The provisions of Section 271(1)(c)(iii) prior to 1.4.1976, and after  
 its amendment by the Finance Act, 1975 with effect from 1.4.1976, later  
 provisions being applicable to the assessment year in question, being  
 substantially the same except that in place of the word ‘income’ in sub  
 clause (iii) to sub clause (c) of Section 271 prior to its amendment by  
 Finance Act, 1975, the expression “amount of tax sought to be evaded”  
 have been substituted. Explanation 4 inserted for the purpose of  
 clause (iii) where the expression “the amount of tax sought to be  
 evaded”, was inserted had in fact made no difference in so far as the  
 main criteria, namely, absence of tax continued to exist, prior to or after  
 H 1.4.1976, changing only the measure or the scale as to the working of

the penalty which earlier was with reference to the 'income' and after the amendment related to the 'tax sought to be evaded'. The *sine qua non* which was there prior or after the amendment on 1.4.1976 to the fact that there must be a positive income resulting in tax before any penalty could be levied continued to exist. The penalty imposed was in 'addition to any tax'. If there was no tax, no penalty could be levied. The return filed declaring loss and assessment made at a reduced loss did not warrant any levy of penalty within the meaning of Section 271(1)(c)(iii) with or without Explanation 4." A  
B

27. In *Commissioner of Income Tax, Indore v. Suresh Chandra Mital* [2003] 11 SCC 729, whereupon Mr. Datta, learned Additional Solicitor General relied, no reason was assigned and only the order of the High Court was not interfered with. Therein, it appears, the assessee pleaded that he had submitted the revised return of income which was not found to be sufficient. C

28. In *M. Janardhana Rao v. Joint Commissioner of Income Tax* [2005] 2 SCC 324, whereupon again reliance was placed by Mr. Datta, this Court was concerned with the meaning of the substantial question of law as obtaining in Section 271A of the Income Tax Act. We are not concerned with the said question in the present case. D

29. It is not a case where penalty has been imposed for breach of contravention of a commercial statute where lack of or intention to contravene or existence of bona fide may not be of much importance. It is also not a case where penalty is mandatorily impossible. It was, therefore, not a case where the enabling provision should have been invoked. E

30. For the reasons aforementioned the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs. F

N.J.

Appeal allowed.