IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

CORAM

THE HON'BLE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

Tax Case (Appeal) No.319 of 2017

The Commissioner of Income Tax
Chennai. .. Appellant

Vs.

S.S.M.Ahmed Hussain .. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai, dated 4.5.2016 passed in I.T.A.No.237/Mds/2016.

For Appellant : Mr.T.Ravi Kumar
Standing Counsel

JUDGMENT
(Delivered by *the Hon'ble Chief Justice*)

This appeal is against a common order dated 4^{th} May, 2016 of the Income Tax Appellate Tribunal, inter alia, allowing the appeals being I.T.A.Nos.237/Mds/2016 and 253/Mds/2016 of the respondent Assessee and deleting the penalty levied by the Assessing Officer for the assessment year 2010-2011.

2. The Assessee filed his original return of income for the assessment year 2010-2011 on 29.3.2012 admitting a total income of Rs.7,31,554/-. In the return and/or the statement appended thereto, the Assessee showed the sale of agricultural land at Neelankarai for Rs.2,19,69,043/- and claimed exemption of Rs.1,90,00,000/- under Section 54B of the Income Tax Act, 1961 (hereinafter referred to as "*the Act*") towards re-investment in agricultural land at Mahabalipuram.

3. Section 54B of the Act provides as follows:

"Section 54B. Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.

(1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the Assessee being an individual or his parent, or a Hindu undivided family for agricultural purposes (hereinafter referred to as the original asset), and the Assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of

the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(*i*) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be *nil*; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.

(2) The amount of the capital gain which is not utilised by the Assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any

case not later than the due date applicable in the case of the Assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the Assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(*ii*) the Assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid."

4. It is not in dispute that the sale consideration of Rs.2,19,69,043/- received in respect of land at Neelankarai was

disclosed in the original income. Nor is it in dispute that the Assessee had paid money to M/s.Alpha Commercials, which the Assessee claims was for purchase of agricultural land.

5. It appears that later a combined survey under Section 133A of the Act was conducted in the case of one Sri Ameerdeen, a partner of M/s.Alpha Commercials, after which it was found that M/s.Alpha Commercials had not purchased agricultural land on behalf of the Assessee.

6. Thereafter, in response to a notice under Section 148 of the Act, the Assessee filed a revised return of income for the assessment year 2010-2011 admitting income of Rs.7,31,554/- (excluding capital gains of Rs.1,90,27,203/-), after withdrawing the deduction claimed under Section 54B of the Act of Rs.1,90,00,000/- and paid the taxes on capital gains.

7. Penalty proceedings were initiated under Section 271(1)(c) of the Act by issuance of notice under Section 274 read with Section 271 of the Act on 8.3.2014. The grounds for initiation of penalty proceedings were that the Assessee had incorrectly claimed exemption under Section 54B of the Act towards capital gains arising out of sale

of agricultural lands at Neelangarai, Chennai.

8. In the course of combined survey operations conducted in the premises of Sri Ameerdeen, the said Ameerdeen had allegedly stated that no agricultural activity had been carried out at the Neelangarai land, which was only urban land. The Assessee's claim of exemption was, therefore, on the basis of materials unearthed and/or statements obtained in the said proceedings, held to be wrong. Further, the Assessee was found not to have invested the sale proceeds in purchase of agricultural lands or to have deposited the same in the Capital Gains Account Scheme within the period stipulated in the Act. The long term capital gain of Rs.1,90,27,203/- was, thus, brought to tax.

9. Pursuant to the notices, the Assessee's representative gave a reply stating that the Assessee had instructed M/s.Alpha Commercials to pay the money to the seller of the agricultural land at Mahabalipuram and had claimed exemption under Section 54B of the Act in good faith.

10. As M/s.Alpha Commercials had used the money for business purposes and had not used the money for purchase of agricultural land

on behalf of the assessee, as per the agreement with the Assessee, the Assessing Officer arrived at the finding that the Assessee had not actually invested the amount received from sale of land in purchase of property and that no payment for purchase of agricultural land had been made to M/s.Alpha Commercials. The Assessing Officer was satisfied that it was a fit case for levy of penalty and imposed minimum penalty of Rs.39,13,426/-.

11. Aggrieved by the imposition of penalty, the Assessee appealed to the Commissioner of Income Tax (Appeals), who dismissed the appeal, after which the Assessee appealed to the Income Tax Appellate Tribunal.

12. The learned Tribunal allowed the appeal of the Assessee and deleted the penalty that had been imposed on the Assessee. The learned Tribunal after hearing the parties and on perusing the records found that the Assessing Officer had failed to appreciate that the Assessee had originally disclosed the details of receipts from sale of property at Neelangarai. The learned Tribunal also observed that it was not disputed that the Assessee had paid money to M/s.Alpha Commercials, of which one of the co-owners of the property was partner, and had, accordingly, claimed deduction under Section

54F/54B of the Act.

13. The learned Tribunal arrived at the factual finding that the Assessee had *bona fide* believed that M/s.Alpha Commercials had, as per mutual agreement, invested the money in residential property to enable the Assessee to claim the benefit of Section 54F/54B of the Act. The learned Tribunal arrived at the finding that the Assessing Officer had not considered the explanation offered by the Assessee as *bona fide* and simply rejected the explanation stating that the Assessee had made a wrong claim in the original return of income and had failed to disclose all material facts truly and wholly.

14. The learned Tribunal observed that it was not the case of the Assessing Officer that the Assessee's claim was either false or bogus. Neither the Assessing Officer nor the Commissioner of Income Tax (Appeals) had examined the claim of the Assessee of having given money to M/s.Alpha Commercials for the purpose of investment in residential property. The learned Tribunal held that the Assessing Officer could not presume that the explanation given by the Assessee was false or bogus without making investigation.

15. The short question before us is whether this appeal filed by

the department against the order of the Tribunal should be entertained?

16. Section 260A of the Act provides as follows:

"*Section 260A. Appeal to High Court*.

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or an Assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be-

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the Assessee or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(b) [***];

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall at the hearing of the appeal, be allowed to argue that the case does not involve such question:
Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -
(a) has not been determined by the Appellate Tribunal; or
(b) has been wrongly determined by the Appellate

Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

17. An appeal lies under Section 260-A of the IT Act, only when there is a substantial question of law. We find that there is no question of law involved in this appeal much less any substantial question of law.

18. In *Sir Chunilal V. Mehta & Sons Ltd. vs Century Spg. & Mfg. Co. Ltd.,* reported in *AIR 1962 SC 1314*, the Supreme Court agreed with and approved a Full Bench Judgment of this Court in *Rimmalapudi Subba Rao vs Noony Veeraju And Ors* reported in *AIR 1951 Mad 969* and laid down the principles for deciding when a question of law becomes a substantial question of law.

19. In *Hero Vinoth Vs. Seshammal* reported in *(2006) 5 SCC 545*, the Supreme Court followed *Sir Chunilal V. Mehta & Sons* (supra) and other judgments and summarized the tests to find out whether a given set of questions of law were mere questions of law or substantial

questions of law.

20. The relevant paragraphs of the judgment of the Supreme Court in *Hero Vinoth* (supra) are set out herein below :

> "21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means—of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with—technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(*a*) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta* v. *Ram Ditta* [(1927-28) 55 IA 235 : AIR 1928 PC 172] the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their

Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal case* [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao* v. *Noony Veeraju* [AIR 1951 Mad 969 : (1951) 2 MLJ 222 (FB)] : (*Sir Chunilal case* [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR p. 557)

> "When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law."

This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial: (*Sir Chunilal case*

[1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR pp. 557-58)

> "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

22. In *Dy. Commr.* v. *Rama Krishna Narain* [1954 SCR 506 : AIR 1953 SC 521] also it was held that a question of law of importance to the parties was a substantial question of law entitling the appellant to a certificate under (the then) Section 100 CPC.

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land

or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See *Santosh Hazari* v. *Purushottam Tiwari* [(2001) 3 SCC 179] .)

24.The principles relating to Section 100 CPC relevant for this case may be summarised thus :

(*i*) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(*ii*) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law .

(*iii*) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (*i*) the courts below have ignored material evidence or acted on

> no evidence; (*ii*) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (*iii*) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

21. In *M.Janardhana Rao Vs. Joint Commissioner of Income Tax [2005 273 ITR 50 (SC)],* the Hon'ble Supreme Court held that the principles contemplated under Section 100 of the Code of Civil Procedure would apply to Section 260-A of the IT Act too.

22. Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal only in a case which involves substantial questions of law, it is not open to this Court to sit in appeal over the factual findings arrived at by the Appellate Tribunal.

23. In the instant case, the learned Tribunal has arrived at the factual finding that it was not the case of the Assessing Officer that the Assessee's claim was false or bogus. Neither the Assessing Officer nor

the Commissioner of Income Tax (Appeals) had examined the claim of the Assessee that the Assessee had given money to M/s.Alpha Commercials for the purpose of investment in residential property. The Assessee's remittance of demand raised by the department cannot be a reason for levy of penalty.

24. Mr.T.Ravi Kumar, learned Standing Counsel appearing on behalf of the department cited the following judgments in support of his contention that the appeal should be entertained:

(i) K.P.Madhusudhanan v. Commissioner of Income Tax, (2001) 251 ITR 0099 (SC);

(ii) M.A.K.Data P. Ltd. v. Commissioner of Income Tax, (2013) 358 ITR 0593 (SC);

(iii) N.Ranjit v. Commissioner of Income Tax-V, Chennai, (2013) 262 CTR 411 (Madras);

(iv) CRN Investments (P) Ltd. v. Commissioner of Income Tax, (2008) 300 ITR 0342 (Madras);

(v) Union of India v. Dharamendra Textile Processors, (2008) 13 SCC 369; and

(vi) Commissioner of Income Tax, Delhi v. Atul Mohan Bindal, (2000) 9 SCC 589.

25. In *K.P.Madhusudhanan* (supra), the Supreme Court held:

"5. ..... The Explanation to Section 271(1)(c) is a part of Section 271. When the Income-tax Officer or the Appellate Assistant Commissioner issues to an Assessee a notice under Section 271, he makes the Assessee aware that the provisions thereof are to be used against him. These provisions include the Explanation. By reason of the Explanation, where the total income returned by the Assessee is less than 80 per cent of the total income assessed under Sections 143 or 144 or 147, reduced to the extent therein provided, the Assessee is deemed to have concealed the particulars of his income or furnished inaccurate particulars thereof, unless he proves that the failure to return the correct income did not arise from any fraud or neglect on his part. The Assessee is, therefore, by virtue of the notice under Section 271 put to notice that if he does not prove, in the circumstances stated in the Explanation, that his failure to return his correct income was not due to fraud or neglect, he shall be deemed to h ave conceal the particulars of his income or furnished inaccurate particulars thereof and, consequently, be liable to the penalty provided by that Section. ......

6. Learned counsel for the Assessee then drew our attention to the judgment of this Court in Sir Shadilal Sugar and General Mills Ltd. & Anr. Vs. Commissioner of Income-Tax, Delhi MANU/SC/0364/1987. He

> submitted that the Assessee had agreed to the additions to his income referred to hereinabove to buy peace and it did not follow therefrom that the amount that was agreed to be added was concealed income. That it did not follow that the amount agreed to be added was concealed income is undoubtedly what was laid down by this Court in the case of Sir Shadilal Sugar and General Mills Ltd. and that, therefore, the Revenue was required to prove the mens rea of a quasi-criminal offence. But it was because of the view taken in this and other judgments that the Explanation to Section 271 was added. By reason of the addition of that Explanation, the view taken in this case can no longer be said to be applicable."

26. The case of *K.P.Madhusudhanan* (supra), is clearly distinguishable, as it was a case of concealment, where income of Rs.93,000/- had not been disclosed. Only after explanation was called for, the Assessee in that case stated that it had obtained loans, which could not be established and ultimately, the concealed income was treated as additional income. In the background of the aforesaid facts, penalty was imposed. The Supreme Court rejected the contention that the onus lay on the Assessing Officer to establish mens rea. In effect and substance, the Supreme Court held that on receipt of a notice, it was for the Assessee to explain, that concealment was not deliberate.

27. The Explanation to Section 271 makes it clear that, if in cases of concealment of particulars of income or furnishing of inaccurate particulars of income, the Assessee fails to offer an explanation or offers an explanation which is found by the ITO or the AAC to be false or offers an explanation which he is not able to substantiate, the amount added or disallowed in computing the total income of such person shall for the purpose of clause (c) i.e., for the purpose of concealment, be deemed to represent the income in respect of which particulars have been concealed. Proviso to Explanation makes it clear that the Explanation is not to apply to a case in respect of any amount added or disallowed as a result of the rejection of any explanation offered by such person, if such explanation is *bonafide* and all the facts relating to the same and material to the computation of his total income have been disclosed by him.

28. After the insertion of the Explanation, it cannot be said that the onus lies on the Revenue to establish *mens rea* for concealment of income before imposition of penalty. If there was failure to return the correct income, there would be a presumption of concealment, unless the Assessee was able to prove that his failure to return his correct income was not due to fraud or neglect.

29. In the instant case, as observed above, the learned Tribunal arrived at the factual finding that there was no concealment and there was an apparently *bona fide* explanation for the claim under Section 54F/54B of the Act, which had not at all been properly considered by making an investigation.

30. In *M.A.K.Data P. Ltd.* (supra), the Supreme Court held that the Explanation to Section 271(1)(c) of the Act raises a presumption of concealment, when a difference is noticed by the Assessing Officer, between reported and assessed income. The burden is then on the Assessee to show otherwise, by cogent and reliable evidence. When the initial onus 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.

31. In the aforesaid case, the contention of the Assessee of having surrendered the additional sum of Rs.40,74,000/- 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 was not accepted. The Supreme Court held that voluntary disclosure did not release the Assessee from the

mischief of penal proceedings. Voluntary disclosure of concealed income did not absolve the Assessee from penalty. Then the Supreme Court also held that the Assessing Officer was not required to record his satisfaction of concealment of particulars of income in any particular way or to reduce it into writing.

32. This was also a clear case of concealment of income. The reply of the Assessee of giving up his claim just to buy peace and avoid litigation was found unacceptable. The judgment is distinguishable.

33. In *N.Ranjit* (supra), a Division Bench of this Court did not find justifiable grounds to set aside the order of the Tribunal, upholding the levy of penalty under Section 271(1)(c) of the Act having regard to the facts of that case. The Division Bench, however, held that it was not that every case of addition warranted levy of penalty. To quote the Division Bench "*The application of penal provisions are not automatic and the levy itself depends upon the facts and circumstances of each case. On the incorrectness of the returns originally filed, not disclosing the transaction in shares, the proceedings subsequent to the statement filed certainly indicates the conduct of the Assessee*."

34. This was also a case of concealment. Transaction in shares had not been disclosed in the original returns. There can be no dispute with the proposition that the conduct of concealment is indicative of the conduct of the Assessee.

35. However, we are in full agreement with the Division Bench that application of penal proceedings are not automatic and the levy depends upon the facts and circumstances of each case. In the case on hand, having regard to the particular facts and circumstances of this case, the learned Tribunal has allowed the appeal and deleted the penalty.

36. In *CRN Investments (P) Ltd.* (supra), a Division Bench of this Court found that there was claim for supply of steel rolls, when in fact there was never any supply. Bills had been raised to facilitate finance from credit institutions and the alleged lease transaction was found to be false and a make believe one. The Assessee resisted the claim of the department contending that they were not aware of forged documents and contended that they had not concealed income nor furnished inaccurate particulars. There was no dispute that the documents were forged.

37. In the aforesaid case, the learned Tribunal had upheld the imposition of penalty. The Division Bench found that the conclusion was factual giving rise to no questions of law. Considering the limited scope of Section 260A of the Act, the Division Bench did not find any justification to disturb the order of the learned Tribunal and, accordingly, the appeal was dismissed.

38. In *Dharamendra Textile Processors* (supra), the Supreme Court observed as under:

> "17. It is of significance to note that the conceptual and contextual difference between Section 271(1)(*c*) and Section 276-C of the IT Act was lost sight of in *Dilip N. Shroff v. CIT, (2007) 6 SCC 329.*
>
> 18. The Explanations appended to Section 271(1)(*c*) of the IT Act entirely indicates the element of strict liability on the Assessee for concealment or for giving inaccurate particulars while filing return. The judgment in *Dilip N. Shroff case* has not considered the effect and relevance of Section 276-C of the IT Act. Object behind enactment of Section 271(1)(*c*) read with Explanations indicate that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276-C of the IT Act."

39. The proposition of law enunciated in *Dharamendra Textile Processors* (supra) is unexceptionable. However, as observed above, there was no concealment in this case and in any case, when the Appellate Tribunal, the fact finding body, has arrived at a finding on facts that there was no concealment, the interference of this Court under Section 260A of the Act is not warranted.

40. In *Atul Mohan Bindal (*supra), the Supreme Court referred to and explained its earlier decision in *Dharamendra Textile Processors case (supra)* and found that there was an element of strict liability on the Assessee for concealment and for giving inaccurate particulars in view of the explanation appended to Section 271(1)(c) of the Act. The Supreme Court concluded that for applicability of Section 271(1)(c) of the Act, the conditions stated therein must exist.

41. The proposition of law that emerges from the judgments referred to above is that in view of the explanation added, it cannot be said that the onus lies on the Revenue to establish mens rea in cases of concealment and/or short payment of tax. There is an onus on the Assessee. Whether the Assessee has been able to discharge the onus would depend on the facts and circumstances of the case.

42. In the instant case, the learned Tribunal, in effect, arrived at a clear finding that imposition of penalty was not justified having regard to the facts and circumstances of the case. It is made clear that our findings are in respect of the common judgment and order under appeal insofar as the same relates to the two appeals of the appellant being I.T.A.Nos.237/Mds/2016 and 253/Mds/2016.

43. We do not find any question of law, far less any substantial question of law that warrants interference.

This appeal is, therefore, not maintained and accordingly dismissed.

(CJ.) (M.S., J.)

04.07.2017

Index : No

Internet : Yes

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To:

1. The Registrar
   Income Tax Appellate Tribunal
   "C" Bench, Chennai.

2. The Commissioner of Income Tax (Appeals)-4
   Chennai – 600 034.

3. The Income Tax Officer
   Business Ward-XV(1)
   Chennai – 600 034.

THE HON'BLE CHIEF JUSTICE
AND
M.SUNDAR,J.

(sasi)

Tax Case (Appeal) No.319 of 2017

04.07.2017