

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.SUNDAR

Tax Case Appeal No.440 of 2017

Principal Commissioner of Income Tax 2,
No.121, Mahatma Gandhi Road,
Chennai-600 034. ... Appellant

Vs.

M/s.F L Smidth Limited,
No.34, Egatoor, Kelambakkam,
Old Mahabalipuram Road,
Chennai-603 103. ... Respondent

Tax Case Appeal is preferred under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 30th September, 2016 in ITA No.1229/Mds/2016 against the order, of the Commissioner of Income Tax(Appeal)6, Chennai dated 24/02/2016, relevant to the assessment year 2002-03 made in ITA.No.162/CIT(A)-6)2010-2011.

against the order of the Assistant Commissioner of Income Tax, Central Circle III(2), Chennai, dated 28/06/2010, made in PAN AAAC14817F.

For Appellant : Mr.Karthick Ranganathan

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JUDGMENT

M.SUNDAR, J.

This appeal is under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act' for the sake of brevity).

2 Essential facts necessary for understanding and appreciating our order are set out infra under the caption "Factual Matrix".

FACTUAL MATRIX :

3(i) The Principal Commissioner of Income Tax-2, Chennai is the sole appellant before us and is hereinafter referred to as 'Revenue' for the sake of convenience and clarity.

3(ii) F L Smidth Limited, Chennai, a company and therefore, a juristic person is the sole respondent before us and is hereinafter referred to as 'Assessee' for the sake of convenience and clarity.

3(iii) Assessment year, which is subject matter of the instant appeal, is 2002-03 and is hereinafter referred to as the 'said assessment year' for the sake of convenience.

3(iv) The other abbreviations used in this order for the sake of convenience, clarity and brevity are as follows :

(a) Assessing Officer is referred to as 'AO'

;

(b) Commissioner of Income-tax (Appeals)-6, Chennai is referred to as 'CIT(A)';

(c) Income Tax Appellate Tribunal 'B' Bench, Chennai is referred to as 'ITAT'.

3(v) Assessee is engaged inter-alia in the business of design, fabrication and supply of cement equipment. Assessee has filed its return of fringe income for the said assessment year on 31.10.2002 declaring a total income of Rs.3,10,70,066.00. The assessment was completed under Section 143(3) of the IT Act, determining the income of Assessee as Rs.9,22,42,335.00. Subsequently, the assessment was revised under Section 154 of the IT Act, determining the income as Rs.9,26,68,392.00. Thereafter, on 31.12.2008, a revision was made giving effect to an order dated 22.06.2007 made by the ITAT, wherein and whereby the income of the Assessee was determined at Rs.9,16,60,121.00.

3(vi) When the matter stood as above, reassessment proceedings were initiated by issuance of a notice under Section 148 of the IT Act on 23.3.2009 and reassessment was completed on 24.12.2009 arriving at a total income of Rs.9,99,04,240.00.

3(vii) Under the above scenario, penalty under Section 271(1)(c) of the IT Act was levied qua restriction of claim of deduction under Section 80HHB of the IT Act. Penalty so levied under Section 271(1)(c) of the IT Act was Rs.29,43,150.00.

3(viii) Against the above said penalty order, Assessee filed an appeal before the CIT(A). CIT(A) after a detailed hearing, in and by order dated 24.2.2016 deleted the penalty levied.

3(ix) Aggrieved, revenue carried the matter to ITAT. The ITAT after a detailed hearing, in and by order dated 30.9.2016 dismissed the appeal preferred by the Revenue, confirming the deletion of penalty by CIT(A).

3(x) Aggrieved by the above said order of ITAT, Revenue is before us by way of this appeal.

3(xi) We now proceed to discuss (under the caption 'Discussion' infra) the rival submissions made at the Bar and the issues in this appeal, in the light of the records before us.

DISCUSSION :

4(i) We have already set out supra the facts and circumstances leading to levy of penalty under Section 271(1)(c) of IT Act, which is subject matter of the instant appeal.

4(ii) While assailing the order of levy of penalty before the CIT(A), Assessee inter-alia contended that it does the work of commissioning of large cement plants in India as well as outside India and that copies of all certificates issued by the Chartered Accountants in Form No.10CCAH for two assessment years prior to the said assessment year were filed.

4(iii) Assessee, while assailing the order of penalty, asserted before CIT(A) that it is entitled to claim deduction on the profits derived from the business of execution of foreign projects under Section 80HHB(1) of the IT Act. Assessee also pointed out that the AO restricted the claim of deduction under Section 80HHB of the IT Act to the extent of amount transferred to the Foreign Projects Reserve Account.

4(iv) Assessee contended that restriction of deduction under Section 80HHB of the IT Act to the extent of the amount transferred to foreign policy reserve account was an inadvertent error. Assessee further contended that it had recomputed the business income and had also paid the entire tax dues thereon.

4(v) Pivotal and primary contention of the Assessee in the appeal before the CIT(A) was that the AO had failed to appreciate the fact that there was a mere inadvertent human error on the part of the Chartered Accountant (who according to the Assessee was different from the Chartered Accountant who issued certificates in earlier years) while issuing the certificate under Section 80HHB of the IT Act and as such, the AO has not examined the aforesaid facts.

4(vi) So contending, Assessee advanced it's case that the perspective of AO while proceeding to levy penalty under Section 271(1)(c) of the IT Act is erroneous.

4(vii) Per contra, the primary contention of Revenue, both before the ITAT and before us is that the Assessee has furnished inaccurate particulars and therefore, is liable to be mulcted with penalty under Section 271(1)(c) of the IT Act.

4(viii) We noticed that this is the fulcrum and sheet anchor of the case of Revenue.

4(ix) We have heard the learned counsel for the Revenue Mr.T.R.Senthil Kumar. We have also perused the orders of the authorities below, i.e., AO, CIT(A), besides perusing the order of ITAT, which is called in question before us.

4(x) What we gather from the orders of the two authorities below and ITAT is that Revenue does not have any incriminating material or evidence against Assessee qua penalty proceedings.

4(xi) AO has not, in his order, referred to any material on record to say with specificity and precision as to what constitutes inaccurate particulars of income in the Assessee's return and as to how AO has arrived at the satisfaction that the same constitutes the crucial determinants for coming to the conclusion that inaccurate particulars have been furnished by Assessee warranting penalty proceedings under Section 271(1)(c) of the IT Act.

4(xii) We also noticed that the Assessee had furnished all details of expenditure as well as income in its return on assessment. There is no finding by the AO that any of the details furnished by the Assessee in its return were found to be incorrect, erroneous or false.

4(xiii) Most importantly, the case of the Assessee that there is only an inadvertent mistake on the part of the new Chartered Accountant in making the claim under Section 80HHB of the IT Act has not been disputed or disbelieved.

4(xiv) In this context, as rightly noticed by ITAT in its order under challenge before us that the AO who framed the original assessment order had committed an error in overlooking the contents of the tax audit report and that this leads to the inference that Assessee has concealed income. As noted supra, Assessee has not furnished inaccurate particulars either.

4(xv) As rightly observed by ITAT, all that happened in the present case was that though a bonafide inadvertent error by the Chartered Accountant had occurred in failing to note the ceiling in respect of the amount credited by the Assessee to Foreign Projects Reserve Account while computing deduction under Section 80HHB of the IT Act, the same does not warrant penalty proceedings much less mulcting the Assessee with penalty under

Section 271(1)(c) of the IT Act.

4(xvi) In our opinion, ITAT has correctly relied on a judgment of the Hon'ble Supreme Court of India in Price Waterhouse Coopers Private Ltd. Vs. CIT reported in (2012) 348 ITR 306 (SC) and also CIT Vs. Reliance Petroproducts Pvt. Ltd. reported in 322 ITR 158 (SC), wherein the Hon'ble Supreme Court held that mere making of a claim which is not sustainable in law by itself will not amount to furnishing inaccurate particulars regarding the income of Assessee.

4(xvii) Further more, this being an appeal under Section 260A of the IT Act, we cannot and therefore, we do not reexamine the factual findings. We take it that the factual finding arrived at by the authority below, namely, CIT(A), as confirmed by ITAT are conclusive, as no perversity has been pointed out by revenue in arriving at such findings.

4(xviii) Having said this, it takes us to the proposed substantial questions of law, on which the Revenue wanted this TCA to be admitted. Questions, which according to the Revenue are substantial questions of law as proposed by the Revenue, in the instant TCA, read as follows :

1. Whether in the facts and in the circumstances of the case the Appellate Tribunal was correct in deleting the penalty levied u/s 271(1)(c) of the Act, relying on the Apex Court's decisions in the case of Price Waterhouse Private Ltd. (348 ITR 306) and Reliance Petro Products Pvt. Ltd. (322 ITR 158) when the case on hand is distinguishable on facts?

2. Whether the Appellate Tribunal was correct in holding that inadvertent error that the Chartered Accountant failed to note the ceiling in respect of amount credited by the assessee to foreign project reserve account while computing the deduction under section 80HHB of the Act by itself would not attract penalty u/s 271(1)(c) of the Act?

4(xix) We have carefully examined the questions set out supra, which according to the Revenue are substantial questions of law.

4(xx) Section 260A(7) of the IT Act has clearly mandated that the provisions of the Code of Civil Procedure, 1908 ('CPC', for brevity), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Therefore, we turn to Section 100 of CPC, which inter-alia deals with second appeals on substantial questions of law.

4(xxi) Hon'ble Supreme Court has given the same meaning to the concept of 'substantial question of law' to both these provisions, i.e., Section 100 CPC and Section 260A of IT Act. This can be inferred from the judgment of M.Janardhana Rao Vs. Joint Commissioner of Income Tax [2005 273 ITR 50 (SC) = (2005) 2 SCC 324], wherein the Supreme Court remanded to High Court an appeal under Section 260A of IT Act since substantial questions of law were not framed at the time of admission and were framed after the conclusion of arguments. In doing so, it referred to the Apex Court judgment in Sir Chunilal V. Mehta & Sons Ltd. vs Century Spg. & Mfg. Co. Ltd. [AIR 1962 SC 1314] to enumerate principles regarding substantial questions of law. Though Chunilal Mehta's case dealt with Article 133(1) of the Constitution of India which provides for certificate of appeal to be granted by the High Court, 'substantial question of law' and principles regarding the concept of 'substantial question of law' were elucidated by the Supreme Court in Hero Vinoth Vs. Seshammal [(2006) 5 SCC 545] and in the said case, the Supreme Court laid down the principles regarding substantial question of law in an appeal under Section 100 of CPC.

4(xxii) We notice that the Hon'ble Supreme Court of India in Hero Vinoth's case has clearly held that the substantial question of law occurring in Section 100 CPC is different and distinct from a mere question of law. Relevant paragraph reads as follows :

"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. "

4(xiii) With regard to 'substantial question of law', the tests laid down by the Supreme Court of India for finding out whether a given set of questions of law are mere questions of law or substantial questions of law is found in Hero Vinoth's case / judgment. The ratio laid down by the Supreme Court is found in paragraphs 21 to 23 of the said judgment, which read as follows :

"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] .) "

4(xxiv) We applied the above tests to the instant case. There is no debatable question of law of substance necessary for determining the rights of the parties in the case. This is just a case where the question as to whether the assessee is liable to be mulcted with penalty under Section 271(1)(c) of IT Act in the given fact scenario / conduct needs to be answered by

applying ratio in this regard, which has been indisputably settled by the Supreme Court of India in Price Waterhouse Coopers Private Ltd. Vs. CIT reported in (2012) 348 ITR 306 (SC) and also CIT Vs. Reliance Petroproducts Pvt. Ltd. reported in 322 ITR 158 (SC). Therefore, we have no hesitation whatsoever in holding that the proposed questions of law are definitely not substantial questions of law. Owing to all that we have set out herein, in our considered view, we do not find any other substantial question of law arising in this case.

4(xxv) We are of the view that they may not even qualify as pure questions of law as they are all turning heavily on facts.

4(xxvi) We have held elsewhere in this judgment that the factual findings returned by the CIT(A) and ITAT are held to be conclusive as we are sitting in Section 260A of the IT Act and as no perversity has been pleaded or projected qua such factual findings.

5 CONCLUSION :

5(i) Owing to all that have been stated supra, we have no hesitation whatsoever in holding that no substantial questions of law arises in the instant TCA and the same deserves to be dismissed.

5(ii) We have also concluded that the assessee is not guilty of deliberate furnishing of inaccurate particulars / concealment of income and is not liable to be mulcted with penalty under Section 271(1)(c) of IT Act.

6 DECISION :

6(i) This TCA is dismissed, confirming the order of the ITAT dated 30.9.2016 bearing reference No.I.T.A.No.1229/Mds/2016, which in turn confirms the order of the CIT(A) dated 24.2.2016 bearing reference ITA No.162/CIT(A)-6/2010-11. To be noted, the CIT(A) order has set aside the order of the Assistant Commissioner of Income Tax, Central Circle III (2), Chennai, dated 28.6.2010, imposing a penalty of Rs.29,43,150.00 on the Assessee.

6(ii) Considering the fact that we have not even issued notice on admission, we are not even examining the aspect of costs. Therefore, the parties will be left to bear their respective costs.

30.08.2017

T.C.(A) No.440 of 2017

THE HON'BLE CHIEF JUSTICE

I have gone through the draft judgment prepared by my esteemed brother, M.Sundar, J., and I am in full agreement with the same. I would, however, like to add as hereunder.

2. Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the "1961 Act") provides that if the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner, in the course of any proceedings under the 1961 Act, is satisfied that any person has concealed particulars of his income or furnished inaccurate particulars of income, he may direct the person to pay penalty as stipulated.

3. Explanation I to Section 271 of the 1961 Act is set out herein below for convenience:

"Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."

4. In view of Explanation I, referred to above, the amount added or disallowed in computing the total income of the assessee is, for the purpose of Section 271(1)(c), to be deemed to represent his income in respect of which particulars have been concealed, only if the assessee fails to offer an explanation or offers an explanation which is found by the Assessing Authority to be false or if the assessee offers an explanation which he is unable to substantiate and fails to prove that the explanation was bona fide and that facts material to the computation of his total income had been disclosed by him.

5. Under Section 271(1)(c) of the 1961 Act, the imposition of penalty is not automatic whenever there is less income returned. The pre-condition for imposition of penalty is subjective satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or the Commissioner, as the case may be, that the assessee has concealed particulars of his income or furnished inaccurate particulars of such income. The furnishing of inaccurate particulars would have to be deliberate.

6. In view of Explanation I, referred to above, there is no requirement on the part of the Revenue to establish mens rea for the purpose of imposition of penalty. Mere satisfaction of concealment and/or furnishing of inaccurate particulars would in itself attract the penal provisions.

7. In *Sir Shadilal Sugar & General Mills Ltd. v. Commissioner of Income Tax*, reported in (1987) 168 ITR 705, the Assessee had agreed to additions to his income to buy peace. The Supreme Court held that it did not follow that the amount that was agreed to be added was concealed income. The Revenue was, therefore, required to prove mens rea.

8. However, in *K.P. Madhusudhanan v. Commissioner of Income Tax*, reported in (2001) 251 ITR 0099 (SC), the Supreme Court held that the Explanation to Section 271(1)(c) of the 1961 Act 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 of the 1961 Act, 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 of the 1961 Act 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 have concealed the particulars of his income or furnished inaccurate particulars thereof and, consequently, be liable to penalty.

9. In K.P.Madhusudhanan (supra), the Supreme Court dissented from and disapproved its earlier view in Sir Shadilal Sugar & General Mills Ltd. (supra) that the Revenue was required to prove mens rea for imposition of penalty. The proposition in Sir Shadilal Sugar & General Mills Ltd (supra) that the Revenue is required to prove mens rea for imposition of penalty is no longer good law.

10. 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.

11. 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.

12. In the instant case, the learned Tribunal arrived at the factual finding that there was no concealment, but a bona fide error made by the Chartered Accountant. The Assessing Officer also did not record any finding that the explanation of bona fide error of the Chartered Accountant was incorrect.

13. In M.A.K.Data P. Ltd. v. Commissioner of Income Tax, reported in (2013) 358 ITR 0593 (SC), 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.

14. 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 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. 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.

15. 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.

16. In CRN Investments (P) Ltd. v. Commissioner of Income Tax, reported in (2008) 300 ITR 0342 (Madras), 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.

17. 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.

18. In Union of India v. Dharamendra Textile Processors, reported in (2008) 13 SCC 369, 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."

19. 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.

20. In Commissioner of Income Tax, Delhi v. Atul Mohan Bindal, reported in (2000) 9 SCC 589, 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.

21. 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 to show that there was no mens rea. Whether the Assessee has been able to discharge the onus of establishing that there was no concealment or deliberate furnishing of inaccurate particulars of income, would depend on the facts and circumstances of the case.

22. In Lanxess India (P) Ltd. v. Assistant Commissioner of Income Tax, reported in (2015) 60 Taxmann.com 352 (Madras), a Division Bench of this Court, having regard to the facts of that case, found that the department was justified in imposing penalty as the explanation of the Assessee in that case was no explanation at all in the eye of law. The Division Bench also

found that the facts had thoroughly been examined by the Tribunal and rightly held against the Assessee. The Division Bench found that there was no question of law, far less any substantial question of law, arising for consideration in the appeal and, accordingly, dismissed the appeal. In this case too, there is no question of law, far less any substantial question of law. We are in full agreement with the Division Bench that when the appeal does not raise any substantial question of law, the appeal is liable to be dismissed.

23. The judgment of the High Court of Karnataka in United Breweries Ltd. v. Deputy Commissioner of Income Tax, Central Circle-2(3), Bangalore, reported in (2016) 72 Taxmann.com 102 (Karnataka), is clearly distinguishable on facts. That was a case where the Assessee had made advances to a Controlled Company and also incurred expenditure and debited these amounts to the account of the Controlled Company. The Tribunal opined that this might be prudent business practice or might have arisen because of the Assessee's anxiety to save its Controlled Company from facing financial crunch. However, this did not in itself afford nexus between the Assessee's business and the loss. The Tribunal was of the view that the loss could not be allowed as a business loss under Section 28 of the 1961 Act and confirmed the disallowance. The High Court rejected the appeal. That was not a case of imposition of penalty.

24. A judgment is a precedent for the issue of law which is raised and decided. A decision rendered in the particular facts and circumstances of a case does not constitute a binding precedent.

25. The initiation of penal proceedings is not automatic and depends upon the facts and circumstances of each case. In the case at hand, having regard to the particular facts and circumstances, the learned Tribunal upheld the order of the Commissioner of Income Tax (Appeals) accepting the explanation of the Assessee of bona fide error on the part of the Chartered Accountant and allowing the appeal. 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.

26. I fully agree with my learned brother that there is no question of law, not to speak of any substantial question of law, that warrants interference under Section 260A of the 1961 Act. The appeal is not liable to be entertained and should be dismissed.

27. In the result, this appeal is dismissed.

Sd/-
Assistant Registrar(CCC)
dt:3/10/2017

//True Copy//

Sub Assistant Registrar

vvk

To

1.Principal Commissioner of Income Tax 2,
No.121, Mahatma Gandhi Road,
Chennai-600 034.

2.The Income Tax Appellate Tribunal,
'B' Bench, Chennai.

3.The Commissioner of Income Tax
(Appeals)-6 Chennai-6

4.The Assistant Commissioner of Income Tax,
Central Circle III(2)
Chennai

+1 cc to M/s.Karthik Ranganathan Advocate sr 62347

arccc
aa05/10/2017

सत्यमेव जयते

T.C.A.No.440 of 2017

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