



T.C.A.No.127 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 17.03.2026

Delivered On: 06.04.2026

CORAM

**THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

T.C.A.No.127 of 2015

Smt.Gunjan Jain,
No.3, Wallace Garden III Street,
Chennai – 600 006.

... Appellant

vs.

The Assistance Commissioner of Income Tax,
(International Taxation)-I(1)
Chennai – 600 034.

... Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai dated 26.09.2013 in ITA.No.748/MDS/2010.

For Appellant : Mr.R.Vijayaraghavan,
for M/s.Subbaraya Aiyar Padmanabhan
Ramamani

For Respondent : Mr.Avinash Krishnan Ravi,
Junior Standing Counsel.



T.C.A.No.127 of 2013

J U D G M E N T

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Tax Case Appeal has been filed by the assessee, being aggrieved by the order passed by the Tribunal confirming the penalty of Rs.1,40,20,656/- levied on her for evading payment of tax on the capital gains enured on her by selling her shares to a foreign Company.

2.The facts of the case is that the assessee, along with her mother-in-law Saritha Jain, father in law M.K.Jain, husband Anurag Jain and her brother in law Vardhaman Jain were shareholders in M/s.Vision Health Service (P) Limited. They all sold their shares to M/s.Perot Systems Investment BV, USA under an agreement dated 15.04.2003. As per the agreement, part consideration paid in lump-sum and the balance payable in three annual instalments. On receipt of Rs.4,23,91,959/- as part consideration for the sale of her shares in the Company, the appellant paid advance tax at the rate of 20% on the capital gains. However, while filing her income tax returns, she claimed exemption under the heads of dividend, interest and share of profit. When her account taken for scrutiny, the escaped income came to light and the Assessing Officer held that the said gains from the sale of shares to be considered as a capital gains. Consequently, action was initiated for penalty proceedings for concealment of income.



3. The assessee claimed that, having paid the advance tax on the said sum and the exemption claimed only at the time of filing the returns, there was no intention to conceal the income. Therefore, penalty cannot be imposed. The Assessing Officer rejected the said contention and imposed a sum of Rs.1,40,20,656/- as penalty under Section 271(1)(c) of the Act, on the ground that the assessee had not only claimed income of Rs.4,23,91,959/- as exempted, in addition, she has claimed refund of Rs.93,21,996/-, which was not due to her.

4. The assessee preferred an appeal before the Commissioner of Income Tax (A), contending that the sale consideration of the shares consists of two components: the Principal sum of USD 2,300,000, payable in lump-sum and the balance to be in paid in annual instalments over a period of three years. The details of agreed payment were as below:-

Sl.No.	Particulars	Amt: in INR	Assessment Year
1	Sale price @ 23\$ for 15,000 shares	1,59,04,500	2004-2005 Invested in Bonds
2.	Contingent Payment-I	34,08,283.19	2005-2006 Offered as income from capital gain
3.	Contingent Payment-II	1,05,98,547	2006-2007 Offered as income from capital gain
4.	Contingent Payment-III	3,17,93,411.28	2006-2007 Offered as income from capital gain



5. Having paid advance tax at 20% for the amount received as part payment, the assessee claimed exemption and filed her returns for the respective assessment year. She has claimed that while the contingent payment received was not taxed for the Assessment Year 2006-2007, the Assessing Officer has taxed the amount as profit in lieu of salary under Section 17(3)(ii) and taxed at the rate of 30%.

6. The assessee argued that, when there is no concealment of income and only the head of income is in dispute. Penalty need not be levied, since it is only due to difference of opinion about the gains from the transfer of shares, without receiving the full value of consideration in the year of transfer. Rejecting the said contention, the Appellate Authority upheld the levy of penalty.

7. Being aggrieved by the order of the CIT (A), the Assessee moved the Income Tax Appellate Tribunal and contended that, under a genuine belief, the amount could not be taxed in India since the Authority for Advance Ruling, in case of Assessee's husband Anurag Jain, had held that the sums received were taxable in the hands of *Anurag Jain* as profit in lieu of salary, in relation to the contingent payment. Therefore, the assessee under the legitimate belief that the said sum could not be considered as taxable gains in her hands.



8. The Tribunal, *vide* order dated 26.09.2013, confirmed the levy of penalty imposed by the Assessing Officer and same was confirmed by the Commissioner of Income Tax (Appeals) on further appeal.

9. At the time of admission, the following substantial questions of law was framed by this Court:

“i. Whether on the facts and circumstances of the case, the Tribunal was right in law in confirming the levy of penalty under Section 271(1)(c) of the Act, when there was no failure on the part of the assessee either to conceal or furnish inaccurate particulars of income ?

ii. Whether on the facts and circumstances of the case, the Tribunal was right in law in confirming the penalty levied under Section 271(1)(c) where the assessee had made a claim under a bonafide belief and had not intended to or attempted to either conceal its income or furnish inaccurate particulars ? And

(iii) Whether on the facts and circumstances of the case, the Tribunal was right in law in confirming penalty ignoring that the dispute was with regard to only the head of income since the memo of adjustment has a specific reference to the capital gains earned and also has a specific mention regarding the exemption claimed under Section 10(38) of the Act?”

10. On perusal of the impugned order and the submissions made by the Learned Counsel on both sides, we find that there is no dispute regarding the transfer of shares held by the assessee to a Foreign Company for a particular sale consideration and receipt



of part consideration in lump-sum and the agreement to receive the balance consideration in three installments running over period of three years. It is also not disputed that a portion of the payment received was invested by the assessee in the NABARD Capital Bonds.

11. During the assessment year 2005-2006, a portion of receipt to tune of Rs.34,80,283/- was offered as capital gains and tax paid by the assessee. However, when it came to the next assessment year i.e., 2006-2007, the subsequent receipt from M/s.Perot Systems Investments, to whom the assessee has sold her share, the assessee has sought for exemption and filed returns exempting the said income. On scrutiny of the returns, the omission been found and explanation sought from the assessee. Since the explanation was not satisfactory, the Assessing Officer imposed penalty and same confirmed by the Appellate Authority as well as the Tribunal, holding that it is a willful non-disclosure of income. The reason for upholding the levy of penalty are:-

- a) The Company being a non-listed Company, the transaction of shares not subjected to Securities Transaction Tax (STT).
- b) Claiming refund as if the income was exempted under Section 10 of the Act was apparently an intentional attempt to evade tax.



c) Further, the Authority for Advance Ruling, in case of *Anurag Jain In Re*, held that the payments received in subsequent years were to be considered as profits in the nature of salary, on the hand of the said Anurag Jain who had an employment agreement with the Company. Such employment agreement with this is absent in case of the present assessee.

12. The Tribunal, having considered the facts of the case in hand and the case of *Anurag Jain* had distinguished it, to arrive at the conclusion that the assessee was not entitled for exemption and the gains received on sale of shares should be treated as capital gains. When there is no legal basis for the claim of exemption, the said omission to pay tax cannot be taken as a plausible view to take cover under bonafide belief.

13. The judgment cited by the Learned Counsel for the appellant, on the general principle of Law regarding uniformity and consistency in judicial pronouncement, has no relevance to the case in hand since the facts of Anurag Jain's case, which has invited ruling from the Authority of Advance Ruling is different from the facts of the assessee case and therefore, there cannot be uniformity between two decisions which are factually different.



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14. Whether penalty can be imposed under Section 271(1)(c) of the Act or not is based on whether the non-disclosure of income is with the intention to avoid tax or a bonafide omission.

15. In this case, no doubt, the assessee has paid advance tax but in the returns filed, she has not disclosed the amount as taxable income but sought for exemption and also consequentially claimed for refund. The suppression of income had come to light only on scrutinising the case. Thus, the intention to evade tax is apparently seen from the conduct of the assessee. Therefore, we are of the view that the orders of the Assessing Officer, Appellate Authority as well as Tribunal which has consistently held that the assessee has furnished inaccurate particulars to evade tax and hence, warrants levy of penalty need to be affirmed.

16. As a result, the substantial questions of law are answered against the assessee. Accordingly, the Tax Case Appeal stands dismissed. There shall be no order as to costs.

(Dr. G.JAYACHANDRAN, J.) & (SHAMIM AHMED, J.)
06-04-2026

Index :Yes.
Neutral Citation :Yes/No.



T.C.A.No.127 of 2018

To,

The Assistance Commissioner of Income Tax,
(International Taxation)-I(1)
Chennai – 600 034.



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Dr. G.JAYACHANDRAN, J.
&
SHAMIM AHMED, J.
bsm

Pre-Delivery judgment made in
T.C.A.No.127 of 2015

06-04-2026