



T.C.A.No.289 of 2014

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.289 of 2014

Ms.Sarita Jain,
No.3, Wallace Garden III Street,
Chennai – 600 006.

... Appellant/Respondent

vs.

The Assistance Commissioner of Income Tax,
Circle – XV,
Chennai – 600 034.

... Respondent/Appellant

Prayer: Tax Case Appeal under Section 260A of the Income Tax Act, 1961,
against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated
21.02.2012.

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

For Respondent : M/s.V.Pushpa,
Senior Standing Counsel.



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JUDGMENT

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The appellant, Ms.Saritha Jain, is an income tax assessee who sold her shares in M/s.Vision Health Services (P) Ltd., the Company incorporated in India to M/s.Perot Systems Corporation, a company incorporated in USA, for a consideration of Rs.5,51,29,555/- and paid advance tax during the year on the capital gains of Rs.5,51,29,555/-. However, while filing her return of income for the assessment year 2006-2007, she claimed exemption under Section 10(34) of the Act for this gain, along with income under the heads dividend, interest and share of profit and sought for refund of Rs.1,22,48,928/-.

2. The case was selected for scrutiny and the Assessing Officer denied exemption under Section 10 on the ground that M/s.Vision Health Services (P) Ltd., is not a listed company and no Security Transaction Tax (STT) suffered by the assessee on the sale of those shares, hence it has to be brought under the head capital gains and to be taxed accordingly, without exemption. As a consequence, penalty proceedings under Section 271(1)(c) of the Act for concealment of income was initiated.

3. The assessee gave explanation that she had not concealed the income nor failed to pay the tax. She claimed exemption under Section 10(34) of the Act based on the



bonafide opinion that the gains out of the transfer of shares was not taxable, as the full value of the consideration was not received by the assessee during that particular year and the consideration was agreed to be paid in instalments over a period of three years. This explanation was rejected by the Assessing Officer.

4. On appeal to the Commissioner of Income Tax (A), the assessee succeeded. Her explanation was found to be probable by the Appellate Authority and held that there was no intentional concealment of income. Therefore, deleted the penalty levied on the assessee. As against the deletion of penalty levied, the Department filed appeal before the Tribunal. The Tribunal reversed the Appellate Authority order and upheld the penalty levied by the Assessing Officer. Hence, the assessee has preferred the present appeal under Section 260A of the Income Tax Act.

5. The appeal admitted for deciding the following substantial questions of law:-

1. Whether on the facts and in the circumstances of the case and in law the tribunal was right in law in reversing the order of CIT (Appeals) and restoring the penalty levied by the assessing officer u/s 271(1)(c) of the Act ignoring the explanation offered by the assessee?

2 Whether on the facts and circumstances of the case and in law the Tribunal was justified in reversing the order of CIT (Appeals) and restoring 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



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attempted to either conceal its income or furnished inaccurate particulars?

3. Whether on the facts and circumstances of the case and in law the typographical error in disclosing the capital gains as exempt u/s 10 in the computation of income by the Chartered Accountant would attract penalty u/s 271(1)(c) of the Act?

6. The contention of the appellant, through her Counsel is that, the income from the sale of shares was never concealed by the assessee. She had disclosed the transaction and paid advance tax for it. Only while filing the return at the end of the assessment year, on advice and opinion, she made claim of exemption bonafidely. The inadvertent omission to mention the relevant sub-section in the Chartered Accountant's certificate is not intentional to levy penalty.

7. Further, the assessee, (Saritha Jain), along with her husband (M.K.Jain), her sons (Anurag Jain, Vardhaman Jain) and her daughter-in-law (Mrs.Gunjan Jain), were all shareholders in M/s.Vision Health Care (P) Ltd. All of them sold their shares to M/s.Perot Systems Corporation and its subsidiary companies in terms of agreement dated 15.04.2003. The consideration was agreed to be paid in two components: initially, a sum of Rs.5,23,00,000/- in lump-sum and the balance in three instalments by the end of March 2004, 2005 and 2006. One of the sharer of the company by name, Anrag Jain,



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for the shares he sold along with this assessee, sought for opinion from the Authority for Advance Rulings on tax liability on the gains arising from the transfer of shares in the Indian Company to a foreign Company on deferred payment basis. The Authority held that the consideration mentioned in the purchase agreement is a composite payment. Therefore, the gains arising on the transfer is chargeable to tax under the head of Capital Gains only on the initial payment. The contingent payments cannot be taken into account in computing the capital gains, but would be taxable in the case of Anurag Jain under the head 'salaries' under Section 17(3)(ii) of the Act.

8. Relying heavily upon the above ruling of the Authority for Advance Rulings, the Learned Counsel for the appellant argued that, the exemption claimed might not be accurate or sustainable in law, but it cannot be termed as concealment of particulars. Following the dictum laid down by Supreme Court in ***Commissioner of Income Tax vs. Reliance Petroproducts*** reported in (2010) 322 ITR 158 (SC) and the decision of the Madras High Court in ***Commissioner of Income Tax vs. Saradha Textiles*** reported in (2006) 286 ITR 499 (Mad), the Commissioner of Income Tax (Appeals) had rightly held that the levy of penalty under Section 271(1)(c) of the Act need to be deleted. Therefore reversing the finding of the Appellate Authority by the Tribunal is improper.



9. The Learned Counsel for the Appellant further contended that a typographical error in the Chartered Accountant's report is not a proper reason to hold that the assessee had intentionally concealed the income. Hence sought for exemption to be resorted.

10. Per contra the Learned Counsel for the Department recorded his submissions as below:-

The shares of M/s.Vision Health Sources Pvt Ltd are not listed in stock exchange. On transaction of shares, no securities Transaction Tax (STT) paid by the assessee, which is one of the essential condition to claim exemption. The assessee having well advised by the competent auditor and Chartered Accountant, had rightly paid the advance tax in respect of the capital gains on sale of shares. However, to make gain illegally claimed exemption while filing the returns. But for the scrutiny of the assessment, the income liability for tax would have escaped assessment. In order to claim exemption under Section 10, the shares should be of a listed company and this is a pre-condition to seek exemption. The judgments relied by the Appellate Authority to hold in favour of the assessee are not factually applicable to the case in hand. The assessee, who was not eligible for exemption on the gains accrued from the sale of shares, made a false claim for exemption and sought for refund of tax paid. Therefore, it



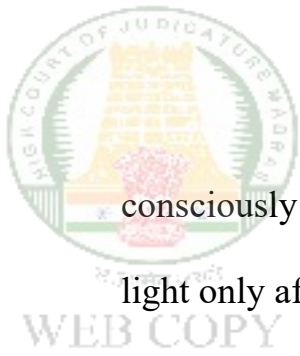
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is clear from the fact that the assessee has willfully made a false claim. Hence, it attracts penalty.

11. The Learned Counsel for the Department further submitted that the authority of Advance Ruling given in case of *Anurag Jain, in re* is factually not applicable to this assessee, though both are shareholders in the same Company and sold to the same buyer in case of Anurag Jain, there is a relationship of employer and employee between the buyer Company and seller Company which is absent in the case of the assessee herein. Therefore, advance ruling of the Authority in respect of *Anurag Jain*, is to be confined to the facts of Anurag Jain case alone and cannot be extended to the other assessees.

12. The sum and substance of the defence taken by the assessee for challenging the penalty imposed is that the payment of advance tax and her attempt to claim exemption from the long-term capital gains was on bonafide belief. In the absence of intentional concealment of income, penalty cannot be imposed under Section 271(1)(c) of the Income Tax Act.

13. Per contra, the contention of the Department is that the payment of advance tax will not exonerate the assessee from the levy of penalty, since the assessee had



consciously sought exemption and refund of tax paid. The escaped assessment came to light only after scrutiny. Therefore, the order of the Tribunal has to be upheld.

Finding of the Court:

14. The test to decide whether penalty can be imposed or to be deleted, is based on the result of examining the intention of the assessee. If it is unintentional and inadvertent omission, the imposition of penalty under Section 271(1)(c) of the Income Tax Act is impermissible. In this case, the Assessing Officer as well as the Tribunal, citing reasons, have held that the assessee has intentionally failed to disclose the capital gains on sale of shares and it is not an inadvertent omission.

15. To arrive at the said conclusion, strong reasons were cited by both the Assessing Officer and the Tribunal. Being aware of the fact that the assessee is liable to pay capital gains, the appellant had paid the advance tax. However, with the intention to avoid payment of tax for the said capital gains, she had sought exemption while filing the returns. Only on scrutiny, the escaped assessment had come to light and tax has been collected. Being an intentional omission to declare the capital gains same is to be construed as concealment of income. Furnishing inaccurate particulars of income attracts penalty. It is true that not in every case of non-payment or short payment of



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duty, the penalty clause would automatically get attracted. If in case of inadvertent omission or unintentional omission, penalty need not be imposed. However, in this case, it is not an inadvertent omission. A conscious claim of exemption was made after paying the advance tax, later, refund claimed. Only when the escaped income was found in scrutiny, the assessee wants to rely upon the authority of Advance Rulings in the case of Anurag Jain who stand on a different footing and factually different from the case of the appellant herein. Though both have sold shares of the same company to the same purchaser, the nature of relationship between the Company and the shareholder was different. Anurag Jain was not only a shareholder of the company but also an employee. Therefore, considering the said fact, the authority of Advance Ruling has held that in case of composite share purchase agreement containing an employment agreement and non-competition clause specifying the closing payment as regards purchase of shares and contingent payments payable in future as regards service and non-competition clause. Only the closing payment shall be taken as the full value of consideration for the purpose of Section 48. In the absence of any employment agreement and non-competition clause between the seller of the share and the buyer of the share, the said ruling will not apply. The assessee though had paid advance tax for the capital gain, she has not declared it in her returns, expecting that the non-disclosure of the income will go unnoticed. Only on scrutiny, the suppression has come to light and she was made to pay



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capital gains and also penalty. While the assessee has paid the capital gains but resisting the payment of penalty.

16. The Tribunal having notice the intentional suppression of gains has rightly reversed the finding of the Commissioner of Income Tax (Appeals) and restored the penalty levied on the assessee. The reasons for reversing the order is justifiable. Having found that the exemption sought was not bonafide and the claim of exemption under Section 10 of the Act as well as the computation of income by the Chartered Accountant not been typographical error but an intentional and conscious attempt to evade tax, penalty been levied. Accordingly, the substantial question of law is answered in favour of the Revenue.

17. As a result, 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.



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SHAMIM AHMED, J.
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Pre-Delivery judgment made in
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