

Sanjay D. Gupta Vs. Asstt. Cit

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Court : Mumbai

Decided On : Jun-11-2003

Reported in : (2004)91TTJ(Mumbai)796

Appeal No. : ITA No. 7258/Mum/1997 11 June 2003 A.Y. 1995-96

Appellant : Sanjay D. Gupta

Respondent : Asstt. Cit

Advocate for Pet/Ap. : Deepak Tralshawala, *for the Assessee* V.B. Balani, *for the Revenue*.

Judgement :

ORDER

Satish Chandra, A.M.:

The appeal by the assessee is directed against the order dated 18-11-1997, of the Commissioner (Appeals)-XXXVII, Mumbai, whereby the Commissioner (Appeals) confirmed the penalty of Rs. 5 lakhs imposed by the assessing officer under section 271(l)(c) of the Act read with Expln. 1 thereunder for the assessment year 1995-96,

2. The facts in brief are these : The assessee is an individual whose sources of income are income from house property, business income and income from other sources. For the assessment year 1995-96, the previous year of which ended on

31-3-1994, he filed his return declaring income of Rs. 2,96,640 on 26-10-1995, declaring therein, inter alia, long-term capital loss of Rs. 1,33,583. The assessing officer found that the assessee declared profit of Rs. 15,33,846 on the sale of his land at Panvel. However, this gain on sale of land was not offered for taxation on the ground that it pertains to sale of agricultural land and is therefore, not taxable. During the course of assessment proceedings, the assessee filed a copy of the purchase agreement of the land at Panvel along with 7/12 Extract in the name of person from whom the assessee purchased the land on 27-7-1990. The assessing officer appears to have perused the said 7/12 Extract and noticed that it did not indicate any crops produced on the land by the earlier owner. The assessee purchased this land on 27-7-1990, which was sold by him on 30-6-1994. The assessing officer further observed that during the period the land was in the possession of the assessee, no agricultural income has been shown in the returns filed-for the relevant assessment years. He made an enquiry from Tahsildar, Panvel. The enquiry revealed that the land which was sold by the assessee was tax-free for the land revenue. It further revealed that the plots of land in question are situated within a radius of 8 kms. of Panvel Distt. limit. The assessing officer brought this fact to the notice of the assessee vide his letter dated 1-3-1996, during the course of assessment proceedings and fixed the case for hearing on 12-3-1996. On 12-3-1996, the assessee filed a revised return declaring capital gain of Rs. 15,33,846 on sale of plot of land at Panvel. The assessing officer noticed that while filing the revised return, the assessee has taken into account long-term capital loss of Rs. 1,33,583 pertaining to sale of shares. The assessing officer, therefore, completed the assessment on 25-3-1996, under section 143(3) on total income of Rs. 16,96,990 including therein income from capital gain at Rs. 14,00,263 as per revised statement. He initiated penalty proceedings for filing inaccurate particulars of income at the time of filing original return and observing that the revised return was filed after detection by the department.

3. In response to show-cause notice vide letter dated 24-4-1996, the assessee contended as below :

(i) The assessee has not concealed or furnished inaccurate particulars relating to the capital gain on sale of agricultural land since the facts relating to the same and

material to the computation of the total income has been disclosed while filing the return of income.

(ii) The assessee is assessed to tax since the assessment year 1973-74. He became an agriculturalist by taking necessary permission under the Bombay Tenancy and Agricultural Land Act, 1948.

(iii) He purchased agricultural land at Taluka Panvel on 27-7-1990, for Rs. 1,80,000 and the investment was duly shown in the books of account. On 30-6-1994, he entered into an agreement for sale of the said land for Rs. 17.90 lakhs. While filing return for the assessment year 1995-96, the assessee was under the impression that since the land was agricultural land, the gain was not liable to income-tax as the same was not a capital asset within the meaning of section 2(14)(iii) of the Act.

(iv) During assessment proceedings, the assessee came to know that the land was within 8 kms. from the local limits of Panvel Municipality and therefore, he filed a revised return and paid tax on capital gain in respect of transfer of such asset.

(v) In a country where citizens have not been thoroughly educated on tax laws, bona fide mistakes should not be punished as mens rea could not be attributable to the assessee. Reliance was placed on the decision in CIT v. Off Shore India Ltd. : [1994]209ITR473(Cal) .

The submissions were not acceptable to the assessing officer for the reasons stated hereinbelow :

(i) The assessee was not an agriculturist prior to the purchase of the land at Panvel. He obtained permission for the same under the relevant State law and made an investment of Rs. 1,80,000 on 27-7-1990. However, he did not derive any agricultural income upto the date of sale of the land on 30-6-1994, for a sum of Rs. 17.90 lakhs. According to the assessing officer, such huge gain from transfer of the asset within a short time indicated that the investment had prima facie no bearing on the agricultural potential of the land in question rather, having

regard to the location of the land which is within a very short distance of the Panvel Municipality, consideration other than agricultural potentiality can easily be inferred.

(ii) The contention of the assessee regarding filing of all necessary particulars in the return of income is not acceptable from the mere note appended to the statement of income to the effect that the assessee has sold agricultural land, the profits on which are not offered for tax as it is exempted. In this note, the exact location of the land was not specified. It was also not clarified in the return why the land in question could not be treated as capital asset within the meaning of section 2(14)(iii) of the Act.

(iii) On seeking clarification that how the gain was not taxable, during assessment proceedings vide letter dated 27-2-1996, the assessee submitted that the land is away by more than 8 kms. from the local limits of the municipality. Hence, it is agricultural land under section 2(14)(iii) of the Act. It was further stated therein that although the assessee did not carry any agricultural operation, the benefit of exemption of capital gains on sale of agricultural land cannot be denied. It was on receipt of the said letter that the assessing officer sought clarification from Tahsildar, Taluka Panvel, vide his letter dated 28-2-1996, whether the assessee's land was within the radius of 8 kms. of Panvel Municipality limits and whether any agricultural activity had been carried out. The result of his enquiry was conveyed to the assessee along with notice dated 1-3-1996, requiring the assessee to show cause why the gains on transfer of the land in question be not brought to tax. It was in response there to that the assessee filed revised return on 12-3-1996, and offered the capital gain and paid tax thereon.

(iv) From the sequence of events narrated above, the assessing officer was of the view that the assessee had furnished inaccurate particulars of income and made a false claim in the original return that he had derived certain gains on transfer of asset which was not a capital asset and hence no tax was payable. In the assessment proceedings also, a false explanation was given. Had it been accepted by the assessing officer without cross verification, the assessee would have escaped his liability to tax.

(v) The case of the assessee is fully covered within the meaning of Expln. 1 to s. 271(l)(c) of the Act. The conduct of the assessee was therefore, contumacious according to the assessing officer who also rejected the assessee's contention of a mistake being bona fide and lack of mens rea. The assessing officer also rejected the assessee's plea of ignorance of law and recorded a finding that the assessee is liable to penalty under section 271(1)(c) read with Expln. 1. He, therefore, imposed penalty of Rs. 5 lakhs as against minimum penalty leviable at Rs. 3,46,787.

The assessee appealed.

4. Before the Commissioner (Appeals), the assessee raised the following contentions

'(i) The assessee purchased agricultural land of 32 acres in village Akurli, Taluka Panvel, on 27-7-1990, for Rs. 1,80,000 and sold the same in the year 1994. The assessee was under the bona fide belief that since the said land was agricultural land, profit from it was not liable to income-tax.

(ii) The assessee gave a note in the return to the above effect.

(iii) Concealment can only be of facts and not of conclusions. The assessee has not concealed any facts.

(iv) If an assessee is able to substantiate the explanation with necessary evidence and proofs that it was a bona fide explanation and all material facts were properly disclosed by him, Expln. 1 is inapplicable. Reliance was placed on the decisions in Shashi Raj Kapoor v. Income Tax Officer (1991) 38 ITD 249 (Bom), Diamond Trust Investment (P) Ltd. v. Assistant Commissioner (1994) 51 ITD 123 (Bom) CIT v. Umashankar Saraf (1983) 139 ITR 842 (Bom)

The above submissions of the assessee did not find favour with the Commissioner (Appeals) who confirmed the impugned penalty by observing thus :

'I have considered the rival submissions and looking at the facts of the case, in my opinion, it is squarely covered by Expln. 1 to s. 271(l)(c) of the Income Tax Act. As

rightly pointed out by the assessing officer, it is quite evident from the sequence of events that the appellant had made a false claim regarding capital gains on transfer of assets which were not capital assets and therefore, no tax was payable by him under the Income Tax Act. By filing the revised return, the appellant cannot absolve himself of statutory implications under the Income Tax Act. In the instance case, it is seen that even when the appellant was asked to justify his claim for exemption, the appellant submitted false information and that too when he has been assessed to tax since many years and assisted by able tax consultants/experts, in the field of taxation. Further, as rightly pointed out by the assessing officer, the assessee in the course of assessment proceedings also filed explanation which was found to be false and had the same been accepted by the assessing officer, without putting the same to cross verification, the assessee would have escaped his tax liability. When the appellant was confronted with independent enquiries conducted by the AC, the appellant had no other alternative but to file the revised return. The appellant never disclosed the entire facts necessary to justify his claim for exemption and when confronted by the assessing officer with the evidence collected independently, took the plea that he was not aware of the facts that the land in question was not entitled for exemption under the Income Tax Act. Thus, facts of the case of the appellant are quite distinguishable from the facts of the judicial pronouncement relied upon by the appellant. Therefore, in my opinion, this is a fit case to levy penalty under section 271(l)(c) of the Act. The decision of the assessing officer is upheld.'

Aggrieved, the assessee is before us.

5. Shri Deepak Tralshawala, the learned counsel for the assessee, submitted that the assessee had purchased agricultural land which is evident from the purchase deed appearing at pp. 24-33 of the paper book. The assessee had consistently shown the above land in his return of income. Inviting attention to the note appended below the statement of income filed along with the original return, Shri Tralshawala submitted that the assessee claimed exemption on the ground that he sold the agricultural land and the profits are not offered for tax as it is exempted. He vehemently argued that in the return, the assessee had disclosed the basic details along with the purchase deed. But for the fact that the land fell within 8

kms. of municipal limit, capital gains would not have become exigible. He was candid enough to admit that there was a failure on the part of the assessee to check from the land revenue authorities whether the impugned land fell within 8 kms. of municipal limit before filing the return and even during assessment proceedings. However, it was a bona fide error on the part of the assessee. As soon as the results of enquiry conducted by the assessing officer came to the notice of the assessee, he filed the revised return and declared the capital gains and paid the tax thereon. He further submitted that no further addition has been made and the revised return has been accepted as it is. He, therefore, submitted that the revenue authorities were not justified in imposing the impugned penalty. In support of his arguments, he referred to the following decisions and placed heavy reliance on the following court cases :

(i) CIT v. Suresh Chandra Mittal : [2001]251ITR9(SC)

(ii) Income Tax Officer v. Smt. Devibai H. Parmani

(iii) CIT v. Ram Commercial Enterprises Ltd. : [2000]246ITR568(Delhi)

(iv) Chandra Pal Bagga v. ITAT

(v) ITO v. Fashion ways

(vi) CIT v. Dajibhai Kanjibhai : [1991]189ITR41(Bom) Shri Tralshawala made an alternative plea as well. He submitted that the penalty levied by the assessing officer and confirmed by the Commissioner (Appeals) is excessive.

6. The learned Departmental Representative, Shri V.B. Balani, supported the orders of the revenue authorities. He submitted that the assessee in his return did not offer for taxation, profit of Rs. 16,33,846 on the ground that it was not taxable, the sale being of agricultural land. According to him, no doubt, the sale was that of agricultural land but the profit arising on sale of such land was exigible to capital gains tax as the agricultural land in question was covered under the exclusionary clause (iii)(b) of section 2(14) of the Act. He invited our attention to the explanation furnished by the assessee in response to the query raised by the assessing officer during assessment proceedings, wherein the assessee categorically stated that

the agricultural land is away by more than 8 kms. from the local limits of the municipality which fact was found to be incorrect on enquiry conducted by the assessing officer from the land revenue authorities namely, Tahsildar, Panvel. He vehemently argued that offering of the income by way of capital gains of Rs. 15,33,846 in the revised return was after detection of concealment by the assessing officer in the original return filed by the assessee. The learned Departmental Representative refuted the arguments advanced by' Shri Tralshawala, the learned counsel for the assessee, that during assessment, the assessing officer did not record his satisfaction regarding inaccurate particulars furnished by the assessee in the original return by inviting our attention to the assessment order itself wherein the assessing officer clearly mentioned about the initiation of penalty proceedings for filing inaccurate particulars of income at the time of filing original return and stating specifically that the revised return has been filed after detection by the department. He further submitted that the Commissioner (Appeals) has recorded a finding that the assessee made a false claim in the original return and even filed explanation for not offering the capital gains on transfer of the land in question which was found to be false. Falsehood of the claim was detected only because the assessing officer made cross-verification from the land revenue authorities. He, therefore, submitted that on the facts and in the circumstances of the assessee's case, the revenue authorities are justified in imposing the impugned penalty.

7. We have given our careful thought to the rival submissions, perused the orders of the revenue authorities as also the decisions relied upon by Shri Tralshawala, the learned counsel for the assessee. The assessee is under legal obligation to file his return of income suo motu under section 139(1) of the Act. In case, the assessee does not file his return suo motu within the time allowed under section 139(I), the assessing officer may call upon the assessee to furnish return of his income by issue of notice under section 142(1) of the Act. Assessment proceeding commences thereafter. Having furnished the return under sub-section (1) or in pursuance of a notice issued under section 142(I), if the assessee discovers any omission or any wrong statement therein, he may furnish a revised return within the time allowed as per section 139(5) of the Act. The assessing officer may also call for return by issue of a notice under section 148 if he has reasons to believe

that any income chargeable to tax has escaped assessment for any assessment year for the purpose of making assessment, reassessment or recomputation of income. With this little background, let us notice the provisions of section 271 with which we are presently concerned.

'271(1). If the assessing officer or the Commissioner (Appeals) in the course of any proceedings under this Act is satisfied that any person

(a) and (b) ** ** *

(c) has concealed particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty,

(i) and (ii)

(iii) in the cases referred to in clause (c) in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reasons of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income.

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) 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 purpose of clause (c) of this sub-section be deemed to represent the income in respect of which particulars have been concealed.

The expression is 'has concealed the particulars of income' and 'has furnished inaccurate particulars of income' have not been defined either in section 271 or elsewhere in the Act. However, notwithstanding the difference in the two circumstances, it is now well established that they lead to the same effect namely, keeping off a certain portion of the income from the return. The word concealment inherently carries with it, the element of mens rea. It is intentional suppression of truth or fact known to the injury or prejudice of another. If the disclosure of the fact is incorrect or false to the knowledge of the assessee and it is established, then such disclosure cannot take it out from the purview of the act of concealment of particulars for the purpose of levy of penalty. The process of enquiry into the correctness, truthfulness or accuracy of the particulars furnished by the assessee cannot be closed at the threshold by looking at the return. That would negative and render otiose the very provisions of the statute. As per the rule of evidence, there is distinction between set of facts 'not proved' and facts 'disproved' and facts 'proved'. No doubt, the benefit of the principle that mere unsatisfactory nature of explanation furnished cannot amount to proof of falsity of explanation furnished can apply in case the fact-finding authority reaches a stage which would mean that except rejection of the explanation furnished by the assessee, there is no material to sustain the plea of concealment. But if the state of affairs reveals the stage where one can positively reach a conclusion that the fact alleged is proved or disproved, the principle that mere rejection of explanation cannot result in levy of penalty will have no application. To reach this stage also enquiry will have to be undertaken of the disclosure made in the return or in the statement annexed to the return and arrive at a finding whether the particulars disclosed are truthful or false or not proved to be satisfactory. In the first case, it would be a positive case of no concealment, in the second case, it would be a positive case of concealment and in the third case, benefit of doubt would go in favour of the assessee.

8. It is now well settled that Expln. 1 automatically comes into operation when in respect of any facts material to the computation of total income of any assessee, there is failure to offer an explanation or an explanation is offered which is found to be false by the assessing officer or an explanation is offered which is not substantiated. In such a case, the amount added in computing the total income is deemed to represent the income in respect of which the particulars have been

concealed.

9. Now, let us examine the case of the assessee with a view to find out whether or not the assessee's case falls within the mischief of the provisions of section 271(l)(c) read with Expln. 1 thereunder. Admittedly, the assessee filed his return of income on 26-10-1995, declaring income of Rs. 2,96,640 under section 139(l). The return was accompanied by computation of total income below which the assessee appended a note that the assessee has sold agricultural land, the profits of which are not offered for tax as it is exempted (Rs. 15,33,846). This shows that at the time of filing the return, in the opinion of the assessee, the transfer of agricultural land and profits arising there from is exempt from tax. The basis thereof has been stated during the assessment proceedings in assessee's letter dated 27-2-1996, on query by the assessing officer. It is this : 'Agricultural land does not fall under the definition of a capital asset under section 2(14) of the Income Tax Act, 1961.' This postulates that it was within the knowledge of the assessee as to what constitutes capital asset and that the assessee knew that property of any kind held by him whether or not connected with his. business is capital asset unless it falls within such items specifically excluded, e.g. (i) any stock-in-trade, etc., (ii) personal effects and (iii) agricultural land in India. It further postulates that it was within his knowledge that the agricultural land in India is excluded from the purview of agricultural land if it is situated (a) in any area comprised within the jurisdiction of a municipality, etc. or (b) in any area within such distance, not being more than 8 kms., from the local limits of any municipality, etc., as the Central Government, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations specified by notification in the Official Gazette. It may be stated at this stage that in exercise of the powers vested in the Central Government as aforesaid, the Central Government issued a Notification No. SO 77(E), dated 6-2-1973, and specified in respect of Bombay, areas for urbanisation upto a distance of 8 kms., in all directions from the limits of Municipal Corporation of Greater Bombay. Subsequently, the Central Government published a draft notification in the Gazette dated 13-2-1991, for specifying certain areas for the purpose of item (b) of section 2(14)(iii) of the Act and invited objections and suggestions from the public. After considering objections and suggestions received from the public, the Central

Government in suppression of earlier notification aforesaid, issued fresh Notification No. SO 10(E), dated 6-1-1994, wherein at Sl. No. 14 under the State of Maharashtra areas upto a distance of 8 kms. from the municipal limits in all directions of Panvel Municipality have been specified (See p. 29, col. 3, item 41 of Pithisaria and Pithisaria on extension series, Income-tax Law, Volume 10, 4th Edition). It is, thus, clear that as early as in the year 1973 that the Central Government had earmarked in respect of Bombay, areas for urbanisation upto a distance of 8 kms. in all directions from the limits of Municipal Corporation of Greater Bombay and efforts were on to earmark areas for urbanisation in respect of municipality, etc., falling under a particular district of a State since 1991 which fructified in the beginning of the year 1994 by issue of a comprehensive notification aforesaid by which it was made public that the agricultural land falling upto a distance of 8 kms. of Panvel Municipality shall not be agricultural land for the purpose of item (b) of section 2(14)(iii) of the Act. The facts on record go to suggest that the assessee was very much conscious of the said notification. That is why, in his reply dated 27-2-1996, he, after enumerating the provisions of section 2(14)(iii)(a) and (b) stated that his land is away by more than 8 kms. from the local limits of the Municipality of Panvel. It was due to this assertion that the assessee confidently stated that the land sold by him is agricultural land under section 2(14)(iii) of the Act. Unfortunately, this assertion turned out to be incorrect on enquiry made by the assessing officer from the Tahsildar, Panvel which revealed that the impugned land sold by the assessee was situated within 8 kms., of Panvel district limit. It is, thus, obvious that the assessee not only made a false claim of exemption of the profit on sale of agricultural land but made a false statement saying that his land is away by more than 8 kms., from the local limits of municipality so as to avail the benefit of exclusion of the land for the purpose of being considered as capital asset within the meaning of section 2(14)(iii) of the Act. Admittedly, the assessee is an income-tax payer since 1973 and in the light of the aforesaid facts, it is difficult to accept that he entertained an impression that the land sold by him on 30-6-1994, was agricultural land which did not fall within the exclusion as per item (b) in sub-clause (iii) of section 2(14) of the Act. This is amply proved by the fact that no doubt, the assessee purchased agricultural land in the year 1990 for Rs. 1.80 lakhs: and got himself declared as an agriculturalist

by obtaining the requisite permission under law. But the fact remains that ever since the land was purchased, he did not carry out any agricultural operations thereon for the reasons best known to him. The irresistible presumption which one can safely take is that he never intended to cultivate the land as an agriculturalist and was on the look out for a profitable deal to dispose it of which happened after a wait of just few years when the land purchased for a consideration of Rs. 1.8 lakhs could be sold at a hefty price of Rs. 17.97 lakhs.

10. To reiterate, the assessee himself admitted in the note appended below the statement of total income filed along with the return that there was profit from sale of land which was not offered for tax, it being exempt. This stand was reiterated during the assessment proceedings by claiming that the land is agricultural land and that it is beyond 8 kms. of Panvel Municipality, hence, no capital asset within the meaning of section 2(14)(iii)(b) of the Act till communication to him of the result of enquiry conducted by the assessing officer to the effect that at the time of sale, the land is not an agricultural land, it being within 8 kms. of Panvel municipality, hence, profit on sale is exigible to capital gains tax. On these facts, in our considered view, the impugned penalty is exigible. It may not be out of place to mention that it is not a case where in order to make good any omission in the originally filed return, the assessee voluntarily furnished a revised return including therein, the profit on transfer of the land by way of capital gains. Here, the assessee filed a revised return and offered the capital gains when on enquiry into the truthfulness or correctness of the particulars given by him in the original return were found to be false and incorrect and his mala fide intention to deceive the department was exposed. Blameworthiness attached to the assessee with reference to the original return cannot be avoided by filing a fresh return after concealment has been detected by the assessing officer. In the original return, the assessee claimed exemption of capital gains earned by him on sale of agricultural land, This set in motion, enquiry by the assessing officer into the question whether the said claim is truthful or accurate. This enquiry resulted in proving that the claim made by the assessee and the disclosure of fact relating thereto made by him in the return was not truthful or accurate. Therefore, we do not find any force in the arguments advanced by Shri Tralshawala that since the assessee had given a note below the statement of total income about the sale of agricultural land, the

conclusion, in our view, cannot be reached that the assessee is not guilty of concealing particulars of his income and/or furnishing of inaccurate particulars thereof. At this stage, we may like to refer to the judgment of the Apex Court in Cement Marketing Co. of India Ltd. v. Asstt. CST : [1980]124ITR15(SC) wherein their Lordships held that a return cannot be false unless there is an element of deliberateness due to want of care on the part of the assessee and if there is no reasonable explanation forthcoming from the assessee for such want of care, the court may infer deliberation and the return may be branded as a false return.

11. Now, we may proceed to notice the decision of the Hon'ble Supreme Court in Suresh Chandra Mittal's case (supra) heavily relied upon by Shri Tralshawala, the learned counsel for the assessee. In that case, the facts were these : The assessee first filed his returns for the assessment years 1983-84, 1984-85 and 1985-86 showing income ranging between Rs. 10,000 to Rs. 12,000. Later on, action under section 132 was taken against him which led to reopening of assessments. A notice under section 148 was served on him and pursuant thereto, he filed revised returns for those assessment years showing higher income. When the matter relating to impossibility of otherwise of the penalty for concealment reached the Tribunal, the Tribunal held that the penalty could not be levied. The department took the matter before the High Court and the High Court of Madhya Pradesh held that the Tribunal was justified in cancelling the penalty. The following reasons were given

'Once the revised assessment was regularised by the revenue and once the assessing officer had failed to take any objection in the matter, the declaration of income made by the assessee in his revised returns and his explanation that he had done so to buy peace with the department and to come out of vexed litigation could be treated as bona fide in the facts and circumstances of the case.'

Two things emerge : (i) Returns were filed in response to notice under section 148 and in those returns higher incomes were shown and accepted as it is and (ii) assessee's explanation was found to be bona fide. None of these features are found in the case of the assessee before us. He filed revised return when on enquiry into the truthfulness or correctness of the particulars given by him in the

original return were found to be false and incorrect. Moreover, the return filed so as to include the concealed income in the original return, on the facts and in the circumstances of the assessee's case, cannot be said to be due to any bona fide mistake or omission. We have perused the decision in CIT v. Suresh Chandra Mittal's case (supra). We find that the Hon'ble Apex Court affirmed the decision of Madhya Pradesh High Court in CIT v. Suresh Chandra Mittal : [2000]241ITR124(MP) because the burden of proving concealment was not discharged by the revenue and the department simply rest-ed 'its conclusion on the act of voluntary surrender done by the assessee in good faith. Such is not the case of the assessee at hand, as stated earlier. There was intention to conceal the income which is obvious from the facts and circumstances of the assessee's case which throw sufficient light on the mental process of the assessee at the relevant time. In our considered view, mere filing of a revised return is not sufficient to exonerate the assessee as it does not by itself establish his bona fide.

12. In Ram Commercial Enterprises Ltd.'s case (supra), it has been held that it is the assessing officer who has to form his opinion and record his satisfaction before initiating penalty proceedings. Perusal of the assessment order available on record would go to prove that the assessing officer had recorded his satisfaction in the assessment order itself to the effect that the assessee has concealed the particulars of his income and that revised return is filed after detection by the department. This decision, therefore, renders no assistance to the assessee.

13. In Chandrapal Bagga's case (supra) relied upon by Shri Tralshawala, the learned counsel for the assessee, the assessee had sold immovable property in the accounting year relevant to the assessment year 1992-93. He filed a revised return but claimed that capital gains tax was not payable because it was long-term capital gain and the assessee had purchased a new property within six months against the consideration received on the sale of his house property on 26-4-1991. The assessing officer did not accept this explanation and taxed the difference of Rs. 1,40,000 as short-term capital gain. No appeal was preferred and the addition became final. Thereafter, the assessing officer initiated penalty proceedings under section 271(l)(c) and imposed the penalty. The Tribunal, reduced the penalty. On further appeal, their Lordships held that the assessee had shown long-term capital

gains and claimed exemption but the transaction had been disclosed in the return. There was no concealment of income. However, this decision also is of no help to the assessee, as in the case before us, the relevant basic facts had not been disclosed and exemption was claimed on the basis of incorrect and untruthful facts.

14. In Smt. Devibai H. Parmani's case (supra), it has been held by Mumbai Bench of the Tribunal that as per Expln. 1 to section 271(l)(c), if the assessing officer has found that the explanation offered by the assessee is false, then penalty can be imposed on the amount which is found to be concealed. As stated earlier, the assessee had claimed exemption and the explanation offered during assessment as also penalty proceedings were found to be false and therefore, the assessee becomes exigible to the impugned penalty, as held in this decision.

15. In Fashionway's case (supra) relied upon by Shri Tralshawala, the learned counsel for the assessee, revised return declaring higher income was filed which was accepted by the department and it was in this backdrop that the Amritsar Bench of the Tribunal held that concealment penalty is not leviable. However, this decision also does not advance the case of the assessee as in that case, the return was revised after impounding of books under section 131(3) of the Act whereas in the case at hand, the revised return was filed after enquiry made by the assessing officer proving the falsity of the statement contained in the original return by way of note below the statement of total income.

16. In Dajibhai Kanjibhai's case (supra) relied upon by Shri Tralshawala, the learned counsel for the assessee, there was no evidence to show that the assessing officer was satisfied in the course of assessment proceedings that section 271(l)(c) was attracted to the case of the assessee. However, as stated earlier, in the case at hand, the assessing officer had recorded satisfaction that the assessee had concealed the particulars of his income in the original return and that the revised return was filed after detection of concealment. This decision also does not assist the assessee.

17. For the reasons stated above, we hold that the revenue authorities were perfectly justified in imposing the impugned penalty. We do not find any substance

in the alternative argument of Shri Tralshawala. regarding reducing the penalty amount to the minimum as the facts and circumstances of this case do not warrant such a lenient view.

18. In the result, the: appeal is dismissed.

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