

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ITA No. 14 of 2012

Reserved on: April 6, 2017

Decided on: April 19, 2017

Commissioner of Income Tax, Shimla

...Appellant

Versus

M/s H.P. State Co-operative Bank Ltd., Shimla

...Respondent

Coram

Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice

Hon'ble Mr. Justice Sandeep Sharma, Judge

Whether approved for reporting? Yes.

For the appellant : Ms. Vandana Kuthiala, Advocate.

For the respondent : Mr. Vishal Mohan and Mr. Sanjay Prashar,
Advocates.

Per Sandeep Sharma, Judge

This appeal under Section 260-A of the Income-Tax Act, 1961 has been filed thereby laying challenge to order dated 21.6.2011, passed by the Income Tax Appellate Tribunal Chandigarh Bench 'A', Chandigarh (in short, 'Tribunal'), in setting aside order of Commissioner Income Tax (Appeals).

2. Briefly stated the facts necessary for the adjudication of the present appeal are that the H.P. State Co-operative Bank Ltd. (hereafter, 'assessee') is a credit institution within the meaning of Section 2(5A) of the Interest-Tax Act, 1974 and as such it was under obligation to furnish the return of chargeable interest for the relevant year under Section 7(1) of the Interest-Tax Act, 1974, before 31.12.1992. Under sub-section (3) of Section 7, the assessee could furnish its return of chargeable interest before the expiry of

one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. However, the fact remains that assessee failed to furnish return within stipulated period as prescribed under Section 7 of the Act *ibid*. Assessing Officer issued notice under Section 10 of the Interest-Tax Act, 1974, upon the assessee on 12.9.1995. Assessee, in response to notice as referred above, filed return of interest tax on 19.2.1996 declaring therein chargeable interest of ₹7,18,86,395/-. Assessing Officer passed assessment order under Section 8 (2) on 26.2.1998 determining therein chargeable interest amounting to ₹15,21,18,010/- and raised tax demand of ₹93,89,057/-. Vide rectification order under Section 17, he further demanded ₹1,54,162. Perusal of Annexure P-3 placed on record by the appellant suggests that the Commissioner Income Tax, Shimla, vide order dated 1.3.2000 passed under Section 19 of the Interest-Tax Act, 1974, set aside aforesaid order of assessment having been passed by the Assessing Officer under Section 8 (2) of the Interest-Tax Act, 1974, holding same to be erroneous and prejudicial to the interests of revenue and, accordingly, directed him to make fresh assessment after affording opportunity of hearing to the assessee.

3. Being aggrieved and dissatisfied with the aforesaid order, Assessee preferred an appeal before Commissioner Income Tax (Appeals), Shimla: Panchkula, which came to be registered as Appeal No. IT/4/97-98/SML. However, the same was dismissed as infructuous, by the Commissioner Income Tax (Appeals), vide order dated 2.8.2000, on the ground that Commissioner Income Tax,

Shimla has already set aside assessment directing the Assessing Officer to complete fresh assessment, points of objection as raised in the appeal, no longer survive. It further emerges from the record that the assessee Bank did not contest the chargeable interest assessed by the Assessing Officer. Perusal of Annexure P-6 suggests that during the pendency of the aforesaid assessment proceedings, proceedings under Section 13 of the Interest-Tax Act, 1974, were also initiated by the Department for levying penalty upon the assessee Bank and, accordingly, vide order dated 29.8.2002, penalty of ₹1,49,67,486/- i.e. penalty equal to three times the interest sought to be evaded, was imposed by the Dy. Commissioner of Income Tax, Circle Shimla.

4. Being aggrieved with the penalty having been imposed by the Assessing Officer under Section 13 of the Interest-Tax Act, 1974, assessee Bank preferred an appeal before Commissioner Income Tax (Appeals), Shimla. However, the fact remains that the learned Commissioner Income Tax (Appeals) upheld the penalty imposed by the authority concerned but held that the penalty of 300% is harsh upon the assessee, accordingly, modified penalty to 100% of tax evaded.

5. Being further aggrieved and dissatisfied with the aforesaid order passed by the learned Commissioner Income Tax (Appeals), both the parties filed appeals bearing Intt. Tax Apl. No. 3/Chandi/2003 (A.Y. 1992-93) and Intt. Tax Apl. No. 4/Chandi/2003 (A.Y. 1992-93), before the Tribunal below. Perusal of Annexure P-8, placed on record, suggests that both the appeals

were heard together by the Tribunal and Tribunal, while allowing appeal of the assessee, held as under:

“When we compare the provisions of Section 13 of the Interest-Tax Act, 1974 and Explanation 3 to Section 271(1)(c), it is observed that there is no such provision under the Interest-Tax Act, 1974 corresponding to Explanation 3 to Section 271(1)(c).”

6. It is seen that there is no such provision under the Interest-Tax Act, 1974 corresponding to Explanation 3 to 271(1)(c) of the Income-Tax Act, 1961 and as such basis adopted for imposition of penalty by revenue authority is not in accordance with provisions of Interest-Tax Act, 1974 and, accordingly, cancelled the same.

7. Appellant being aggrieved and dissatisfied with the aforesaid order having been passed by the Tribunal, preferred an appeal under Section 260-A of the Income-Tax Act, 1961 before this Court, wherein following question of law was formulated:

“Whether absence of proviso in section 13 of the Interest tax Act, 1974 corresponding to explanation 3 to section 271(1)(c) of the Income-Tax Act, 1961, could render the case ineligible for penalty u/s 13 of the Interest tax Act even on the differential amount of tax sought to evaded i.e. the difference of tax sought to evaded on chargeable interest assessed by the A.O. and chargeable returned by the assessee?”

8. This Court taking note of the fact that the Tribunal only took into consideration Section 271 (1)(c) while holding that there is no basis for imposition of penalty under Section 13, and ignored other grounds, which were taken into consideration by the Assessing Officer, remanded matter to the Assessing Officer to determine the question as to whether assessee was liable to pay penalty and if so, to what extent, strictly in consonance with the

provisions of Section 13 of the Interest-Tax Act, 1974, totally being uninfluenced by the provisions of Section 271(1)(c) of the Income-Tax Act, 1961.

9. Subsequent to passing of aforesaid order by this Court, Assessing Officer passed fresh penalty order (Annexure P-9 dated 28.5.2010) under Section 13 of the Interest-Tax Act, 1974, levying therein 100% penalty of the amount of ₹49,89,162, i.e. tax sought to be evaded.

10. Assessee being aggrieved with the aforesaid imposition of penalty vide order dated 28.5.2010, preferred an appeal before Commissioner Income Tax (Appeals), who vide order dated 30.11.2010 in Appeal No. IT/119/2010-11/Sml, dismissed the appeal of the assessee and as such assessee was compelled to prefer an appeal before the Tribunal below. Learned Tribunal below, while allowing appeal of the assessee held that penalty under Section 13 of the Interest-Tax Act, 1974 is/was leviable, where assessee had concealed its interest chargeable to tax or furnished inaccurate particulars of tax chargeable. Learned Tribunal below, taking note of the fact that interest became chargeable only pursuant to Board's Instructions No. 1923 dated 14.3.1995, that too for the period from October, 1991 to 31.3.1992 and that the assessee had declared total interest levied by it in its profit and loss account, held that there was no merit in the levying of penalty under Interest-Tax Act, 1974 and accordingly set aside the order of Assessing Officer, levying penalty. In the aforesaid

background, appellant has approached this Court, by way of instant appeal.

11. The appeal was admitted on following substantial question of law, on 21.5.2012:

“i) Whether the finding of the Ld. ITAT to the effect that the assessee has neither concealed the particulars of interest nor furnished inaccurate particulars of interest is perverse even though the assessee had not disclosed or furnished such interest until escapement of the interest was detected by the department?

ii) Whether on the facts and circumstances of the case the ITAT is correct in deleting penalty on the grounds that the interest become chargeable to tax only after Board's inst. No. 1923 dated 14.3.1995 and hence non disclosure of such interest in assessment years prior to this date could not be termed as concealment or furnishing inaccurate particulars, even though the assessee had filed his return after the date?”

12. Ms. Vandana Kuthiala, learned counsel representing the appellant vehemently argued that impugned order dated 21.6.2011 (Annexure P-A) having been passed by the Tribunal below is not sustainable as the same is not based upon correct appreciation of evidence adduced on record by the respective parties as well as provisions of law applicable in the instant case. Ms. Kuthiala, strenuously argued that the Tribunal while holding that there is no merit in levying of penalty under Section 13 of the Interest-Tax Act, 1974, has failed to consider the fact that the interest on securities, interest on head office investment account and interest on loan to primary agriculture cooperative societies was chargeable interest under Interest-Tax Act, 1974. She further stated that Board's Instructions No. 1923 dated 14.3.1995 were clarificatory in nature and no benefit, if any, could be available pursuant to aforesaid instructions to the assessee before he filed

return of interest tax, that too pursuant to the notice under Section 10 of the Interest-Tax Act, 1974. Learned counsel representing the appellant forcefully contended that the learned Tribunal below failed to take note of the fact that return of chargeable interest was not filed voluntarily but was filed in response to notice under Section 10 of the Interest-Tax Act, 1974 and there was difference in the chargeable interest of the assessee and interest as assessed by the Assessing Officer. To substantiate her aforesaid arguments, learned counsel representing the appellant invited attention of this Court to assessment order (Annexure P-9) having been passed by the Assessing Officer under Section 13 of the Interest-Tax Act, 1974, to demonstrate that the assessee had concealed interest chargeable to tax and had furnished inaccurate particulars to the tune of ₹16,63,05,388/- and as such penalty was rightly imposed upon the assessee at the rate of 100% of the interest sought to be evaded.

13. Mr. Vishal Mohan, learned counsel representing the respondent, supported the impugned order passed by the learned Tribunal and stated that there is no illegality or infirmity in the same, as such, there is no scope of interference. While specifically referring to the questions of law referred to herein above, Mr. Mohan strenuously argued that the learned Tribunal below has returned specific findings of fact that assessee neither concealed particulars of interest nor furnished inaccurate particulars of interest, that too on the basis of record made available to it by the Department, during the proceedings of the appeal, as such, same

can not be gone into by this Court especially in the present proceedings. Mr. Mohan, further contended that bare perusal of orders passed by Assessing Officer clearly suggests that penalty has been levied on entire amount of interest assessed to tax as 16.63 Crore, ignoring the fact that advance tax amounting to ₹23,50,000/- was paid by the assessee, prior to initiation of aforesaid proceedings. While specifically inviting attention of this Court to the impugned order passed by the learned Tribunal below, Mr. Mohan, contended that it is undisputed before the authority concerned that since no return form was available, return was delayed but the fact remains that advance tax as referred to above, was paid by the assessee. Learned counsel representing the respondent further contended that bare perusal of order passed by the Assessing Officer clearly suggests that initially interest on securities totaling to ₹3.74 Crores was not subjected to tax but the same was included later on pursuant to order passed under Section 19 of the Interest-Tax Act, 1974. Learned counsel representing the respondent strenuously argued that penalty, if any, under Section 13 of the Act could be levied against the assessee, had he concealed particulars of chargeable interest or furnished inaccurate particulars of such interest. Mr. Vishal Mohan, further contended that provisions of Section 271 (1)(c) of the Income Tax Act, 1961, could also not be made applicable in the case of assessee, which lays down presumption against the assessee, in case of non-filing of return within particular time. In this regard, he invited attention of this Court to para-10 of the impugned order, to demonstrate that

provisions of Section 271(1)(c) of Income-Tax Act, 1961, which lay down presumption against assessee in non-filing of return within particular time, are not applicable to the interest tax proceedings. While concluding his arguments, learned counsel representing the respondent contended that there is nothing on record suggestive of the fact that assessee concealed particulars of interest or furnished inaccurate particulars of interests, rather record clearly suggests that assessee had declared total interest received by it in its profit and loss account. Learned counsel representing the respondent further contended that assessee had furnished return of chargeable interest for the financial year 1991-92 relating to assessment year 1992-93 and had declared chargeable interest of ₹7.18 Crores. In the aforesaid background, he prayed for dismissal of the appeal.

14. We have heard the learned counsel representing the parties and gone through the record.

15. While exploring answer to the questions of law reproduced herein above, as well as submissions made by the learned counsel representing the parties, this Court had an occasion to peruse material adduced on record by the appellant-department as well as impugned order having been passed by the learned Tribunal below, perusal whereof certainly suggest that there is no dispute, if any, with regard to chargeable interest assessed by the Assessing Officer, which was determined by Assessing Officer on 5.2.2002 by way of revised assessment order (Annexure P-5), whereby assessee was held liable to pay chargeable interest at ₹16,63,05,388/- as against interest of ₹7,18,86,385/-.

Dispute, if any, inter se parties is with regard to imposition of penalty under Section 13 of Interest-Tax Act, 1974, whereby, initially penalty of ₹1,49,67,486 i.e. three times of the interest tax sought to be evaded, came to be imposed by the Assessing Officer, however, quantum of same was reduced to ₹49,89,162/- i.e. 100% of tax, sought to be evaded, by the Commissioner Income Tax (Appeals), vide order dated 20.8.2003.

16. This Court, while allowing ITA No. 33 of 2006, having been preferred by appellant department, has already held that Section 271 (1)(c) of the Income-Tax Act, 1961 can not be taken into consideration while imposing penalty under Section 13 of the Interest-Tax Act, 1974. This Court has further held that though Section 21 of the Interest-Tax Act, 1974 makes certain provisions of Income-Tax Act, 1961 applicable to proceedings under Interest-Tax Act, 1974 but Section 271 is not included therein, as such, this Court came to conclusion that provisions contained in Section 271(1)(c) were wrongly invoked by the Assessing Officer and Commissioner Income Tax while imposing penalty under Section 13 of the Interest-Tax Act, 1974 against respondent Bank. However, the fact remains that this Court in the aforesaid appeal, while holding that provisions contained in Section 271 (1)(c) of Income-Tax Act, 1961 are not applicable to proceedings under Interest-Tax Act, 1974, categorically held that Section 13 of the Act provides for imposition of penalty in case assessee conceals particulars of chargeable interests or furnishes inaccurate particulars of such interest. After careful examination of judgment passed by this

Court in ITA No. 33 of 2006, dated 28.10.2009, there can not be any dispute that penalty, if any, under Section 13 of the Interest-Tax Act, 1974 could be imposed against assessee in case Assessing Officer comes to definite conclusion that assessee concealed particulars of chargeable interest or furnished inaccurate particulars of such interest.

17. Careful perusal of impugned order having been passed clearly suggests that learned Tribunal below had an occasion to go through the complete record pertaining to the proceedings of the imposition of penalty under Section 13 of the Interest-Tax Act, 1974, against the respondent. Paras 16 and 17 of the impugned order passed by learned Tribunal below clearly suggest that before passing impugned order, it carefully examined/ analyzed order passed by Assessing Officer imposing therein penalty under Section 13 of the Interest-Tax Act, 1974. It clearly emerges from the impugned order, which is admittedly based upon record of the appellant that assessee had furnished return of chargeable interest for the financial year 1991-92 relating to assessment year 1992-93 and declared chargeable interest at ₹7.18 Crores, which was accepted in its entirety. It is also not disputed that assessee had paid advance tax of ₹23,50,000/- against aforesaid income before closure of financial year i.e. ₹1,10,000/- on 7.2.1992 and ₹12,50,000/- on 16.3.1992. Similarly, there is no dispute that return of chargeable interest as referred above was not filed within stipulated time by assessee, rather same was filed pursuant to issuance of notice of re-assessment issued by Assessing Officer

under Section 10 of the Interest-Tax Act, 1974. Similarly, it clearly emerges from record that further additional amount of tax on securities and head office investment account was ordered by the Commissioner Income Tax, while exercising powers under Section 19 of the Interest-Tax Act, 1974, pursuant to Board's instructions No. 1923 dated 14.3.1995

18. Similarly, it emerges from the order of Assessing Officer itself that assessee in its profit and loss account had declared interest received as ₹39.98 Crores, which was duly considered by the Assessing Officer and details relating to interest on approved securities i.e. chargeable for the period of six months i.e. from 1.10.1991 to 31.3.1992 was duly assessed as income of the assessee. At this stage, it would be profitable to refer to Section 13 of the Interest-Tax Act, 1974, which is reproduced below:

“Penalty for concealment of chargeable interest

13. If the Assessing Officer or the Commissioner (Appeals) in the course of any proceeding under this Act, is satisfied that any person has concealed the particulars of chargeable interest or has furnished inaccurate particulars of such interest, he may direct that such person shall pay by way of penalty, in addition to any interest-tax payable by him, a sum which shall not be less than, but shall not exceed three times, the amount of interest-tax sought to be evaded by reason of the concealment of particulars of his chargeable interest or the furnishing of inaccurate particulars of such chargeable interest.”

19. True it is that provisions contained in Section 13 of Interest-Tax Act, 1974 clearly suggest that penalty is leviable on the assessee where he/she has concealed its interest chargeable to tax or furnished inaccurate particulars of interest chargeable to income tax. It clearly emerges from the record that assessee had

furnished return of chargeable interest for the financial year 1991-92 relating to assessment year 1992-93. At the cost of repetition, it may be taken note at this stage that assessee had also paid advance tax of ₹23,50,000/-, against aforesaid income before closure of the financial year. It also emerges from the record that return was delayed on account of non-availability of return form. Averments with regard to non-availability of return form with the department at relevant time, has been nowhere disputed by the representative of the department, who conducted case before learned Tribunal below.

20. Their lordships of the Supreme Court in **Commr. of Inc.-Tax v. Angidi Chettiar** reported in (1962) 44 I.T.R. 739 have held as under:

“The penalty provisions under section 28 would therefore in the event of the default contemplated by clause (a), (b) or (c) be applicable in the course of assessment of a registered firm. If a registered firm is exposed to liability of paying penalty, by committing any of the defaults contemplated by clause (a), (b) or (c) by virtue of section 44, notwithstanding the dissolution of the firm the assessment proceedings are liable to be continued against the registered firm, as if it has not been dissolved.

Counsel contended that in any event, penalty for the assessment year 1949-50 could not be imposed upon the assessee firm because there was no evidence that the Income-Tax Officer was satisfied in the course of any assessment proceedings under the Income-Tax Act that the firm had concealed the particulars of its income or had deliberately furnished inaccurate particulars of the income. The power to impose penalty under section 28 depends upon the satisfaction of the Income-Tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in clauses (a), (b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income-Tax Officer before the completion of the assessment proceedings by the Income-Tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction. There is no evidence on the record that

the Income-Tax Officer was not satisfied in the course of the assessment proceedings that the firm had concealed its income. The assessment order is dated the 10th November, 1951, and there is an endorsement at the foot of the assessment order by the Income-Tax Officer that action under S. 28 had been taken for concealment of income indicating clearly that the Income-Tax Officer was satisfied in the course of the assessment proceedings that the firm had concealed its income.

In our view, the High Court was in error in holding that penalty could not be imposed under section 28 (1) (c) upon the firm Messrs. S. V. Veerappan Chettiar & Co. after its dissolution."

21. Their lordships of Supreme Court in **K.C. Builders v. Asstt. C.I.T. (S.C.)** reported in (2004) 265 I.T.R. 562 have held as under:

"Section 147 of the Act deals with income escaping assessment. Section 148 deals with issue of notice where income has escaped assessment. Section 254 deals with orders of Appellate Tribunal. Section 256 deals with statement of case to the High Court (reference). Section 271 (1)(c) reads as follows:- "Section 271. Failure to furnish returns, comply with notices, concealment of income, etc. (1) If the Assessing Officer or the Commissioner(Appeals) in the course of any proceedings under this Act, is satisfied that any person (a)

(a) | | | | | ..

(b) | | | | | | | .

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

(i) | | | | .

(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 reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income."

One of the amendments made to the abovementioned provisions is the omission of the word "deliberately" from the expression "deliberately furnished inaccurate particulars of such income". It is implicit in the word "concealed" that there has been a deliberate act on the part of the assessee. The meaning of the word "concealment" as found in Shorter Oxford English Dictionary, 3rd Edition, Volume I, is as follows:- "In

law, the intentional suppression of truth or fact known, to the injury or prejudice of another."

The word "concealment" inherently carried with it the element of mens rea. Therefore, the mere fact that some figure or some particulars have been disclosed by itself, even if takes out the case from the purview of non-disclosure, it cannot by itself take out the case from the purview of furnishing inaccurate particulars. Mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of tax thereon. In order that a penalty under Section 271(1) (iii) may be imposed, it has to be proved that the assessee has consciously made the concealment or furnished inaccurate particulars of his income. Where the additions made in the assessment order, on the basis of which penalty for concealment was levied, are deleted, there remains no basis at all for levying the penalty for concealment and, therefore, in such a case no such penalty can survive and the same is liable to be cancelled as in the instant case. Ordinarily, penalty cannot stand if the assessment itself is set aside. Where an order of assessment or reassessment on the basis of which penalty has been levied on the assessee has itself been finally set aside or cancelled by the Tribunal or otherwise, the penalty cannot stand by itself and the same is liable to be cancelled as in the instant case ordered by the Tribunal and later cancellation of penalty by the authorities."

22. Similarly, Division Bench of Delhi High Court in **CIT v.**

Bacardi Martini India Ltd. (Delhi) reported in (2007) 288 ITR 585

(Delhi) have held as under:

"14. We have heard the counsel for the parties and perused the record. It has been observed by the Supreme Court in K.C. Builders and Anr v. Assistant Commissioner of Income Tax- 2004 ITR Vol. 265 page 562, that concealment inherently carries with it the element of means rea. It is implied in the word 'concealment' that there has been a deliberate act on the part of the assessed. The meaning of word 'concealment' as found in Shorter Oxford Dictionary III Edition, Vol-I is "in law the intentional suppression of truth or fact known, to the injury or prejudice of another". Supreme Court further observed that mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income, unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assess to hide or conceal the income so as to avoid imposition of tax thereon. In order that a penalty under Section 271(1)(iii) may be imposed, it has to be proved that assessed has consciously made the concealment or furnished inaccurate particulars of his income.

15. It is clear from the law laid down by the Supreme court that concealment must be accompanied with the intention of the assessed to evade his tax liability. The assessed in this case had uniformly claimed expenditure against four heads in three assessment years. When the appeal against the order of Assessing Officer before CIT (A) in respect of assessment order 1998-1999 failed the assessed instead of preferring appeal considered it proper not to litigate further as it was running into heavy losses and even if the appeal had been allowed, the assessed would not have paid any tax. The assessed in any case would have remained in heavy losses. The assessed therefore thought it proper not to prefer an appeal and after receipt of order, assessed made an application on 4.2.2003 to correct the income returns of subsequent years in accordance with order of CIT for the year 1998-1999. The assessed, therefore, filed revised returns deleting the expenses which were disallowed by the CIT (A). In the relevant year assessed had also claimed expenses of Rs. 2 crores paid by the assessed in terms of the agreement entered into by the assessed with the leasing Lesser. The assessed claimed the entire amount of Rs. 2 crores as deduction since the assessed had paid this amount of Rs. 2 Crores to the Lesser. There is no dispute that the assessed had disclosed all particulars. It was only difference of opinion between the assessed and the Assessing Officer and the assessed accepted the opinion of the Assessing Officer instead of preferring an appeal.

16. It is not a case where assessed had not been able to explain any expenditure or had failed to give any details and the Assessing Officer had added the same into the income. In *Durga Timber v. CIT* 197 ITR Page 63, relied upon by the appellant, during the course of the assessment proceedings the Income Tax Officer had noticed cash credits and investments shown in the books of account and asked the assessed to give explanation. The assessed could not give explanation of entires nor could explain the source of income and admitted that the two amounts be treated as his concealment. Under these circumstances court observed that there was concealment of income and penalty was justified. In the present case assessed had explained all the expenditure and had actually incurred the expenditure but the expenditures were disallowed because of difference of opinion between the assessed and the Assessing Officer. This is not a case where revised return was filed as a result of discovery of some facts by the Assessing Officer or inability of the assessed to explain the expenditure. The revised return was filed because some of the expenditure were disallowed by the CIT (A) appeal for year 1998-99 although the expenditure were not doubted. There are cases where an expenditure is disallowed by the Assessing Officer and it is allowed by the CIT (A). It is again disallowed by the ITAT and in appeal allowed by the High Court and may be disallowed by the Supreme Court. Merely because there is difference of opinion for allowing or disallowing the expenditure between the assessed and Assessing Officer, it cannot be said that assessed had intention to conceal the income. The filing of the revised return excluding some of the disallowed expenditure and claiming expenditure of Rs. 2 crores which was actually spent by the assessed in the relevant assessment year as deduction, does not amount to concealment or furnishing inaccurate particulars. The assessed had given all particulars of expenditure and income and had disclosed all

facts to the Assessing Officer. It is not the case of the Assessing Officer or the appellant that in reply to the questionnaire of the Assessing Officer, some new facts were discovered or Assessing Officer had dug out some information which was not furnished by the assessed.

17. We find that appellant's contention of concealment of income by the assessed or furnishing of false particulars by the assessed has no basis. There is no force in the appeal and the appeal deserves to be dismissed and is hereby dismissed. No order as to costs.”

23. Similarly, this Court sees substantial force in the arguments having been made by the learned counsel representing the respondent that there was no occasion for the respondent Bank to show interest on securities and interest on head office investment account, because same was made chargeable pursuant to Board's instructions No. 1923 dated 14.3.1995 and that too for the period October, 1991 to 31.3.1992 and as such there is no concealment, if any, on the part of assessee. Learned counsel representing the appellant was unable to dispute that interest on securities and interest on head office investment account was made chargeable pursuant to Board's instructions No. 1923 dated 14.3.1995 and as such, this Court sees no occasion for assessee Bank to declare same in its profit and loss account, wherein it had declared interest of ₹39.98 Crores, on approved securities for the period 1.10.1991 to 31.3.1992. Otherwise also, penalty order dated 28.5.2010 passed under Section 13 of the Interest-Tax Act, 1974, nowhere suggests that appellant was able to prove on record that assessee concealed particulars of interest or furnished inaccurate particulars of interest, rather, careful examination of material available on record clearly suggests that assessee had furnished complete particulars of its income in the profit and loss account

and as such, there is no illegality or infirmity in the order passed by learned Tribunal below, whereby it has held that there is no merit in holding assessee liable to pay penalty under Section 13 of the Interest-Tax Act, 1974.

24. Thus, this Court sees no illegality or infirmity in the order passed by learned Tribunal below, whereby it has deleted penalty on the ground that interest became chargeable to tax only after Board's instructions No. 1923 dated 14.3.1995, because, admittedly, interest on securities and interest on head office investment account was made chargeable pursuant to Board's instructions, which could certainly be not made applicable to the assessment made for the period October, 1991 to 31.3.1992.

25. In these circumstances, we answer both the substantial questions of law in favour of the respondent and against the appellant.

26. Accordingly, impugned order is upheld and appeal is dismissed. Pending applications, if any, are also disposed of.

(Mansoor Ahmad Mir)
Chief Justice

(Sandeep Sharma)
Judge

April 19, 2017
(vikrant)