

---

**(2015) 02 GUJ CK 0005**  
**In the Gujarat High Court**  
**Case No : Tax Appeal No. 29 of 2015**

|                            |    |            |
|----------------------------|----|------------|
| Commissioner of Income Tax | Vs | APPELLANT  |
| Bhavinkumar M. Dagli       |    | RESPONDENT |

---

**Date of Decision :** 16-02-2015

**Acts Referred:**

Income Tax Act, 1961 — Section 139(5), 143(2), 271(1)(c)

**Citation :** (2015) 377 ITR 389

**Hon'ble Judges :** Jayant M. Patel and S.H. Vora, JJ.

**Bench :** Division Bench

**Advocate :** Manish Bhatt, Senior Advocate and Mauna M. Bhatt, Advocate, for the Appellant

---

## Judgement

Jayant M. Patel, J.—The Revenue has preferred the present appeal on the following question of law:

"Whether the Appellate Tribunal has substantially erred in deleting penalty of Rs. 1,61,66,230 under section 271(1)(c) of the Act by ignoring the facts that the original return filed by the assessee on March 27, 2006 for Rs. 5,52,179 cannot be revised under section 139(5) as held by the hon"ble Supreme Court in the case of Kumar Jagdish Chandra Sinha (dead) Through LR's. etc. Vs. Commissioner of Income Tax, West Bengal, and G.C. Agarwal Vs. Commissioner of Income Tax, Assam, Nagaland and Another, and that if the original return was deliberately filed wrong, penalty under section 271(1)(c) is leviable on the admitted amount of concealed income of Rs. 4.81 crores being the peak credits in the bank account of the assessee and his family members?"

We have heard Mr. Manish Bhatt, learned senior advocate appearing for the appellant.

2. The facts are that initially, the return was filed by the assessee for the assessment year of 2005-06 on March 27, 2006, for the taxable income of Rs. 5,52,179. Later on, assessee filed revised return as on March 31, 2006, (which is

stated by Mr. Bhatt for the appellant that the correct date should have been March 31, 2007) showing total income of Rs. 4,44,82,930. There was scrutiny and ultimately, vide order dated December 24, 2007, the income was assessed of Rs. 4,81,14,680. The matter was carried in appeal before the Commissioner of Income-tax (Appeals), wherein on the question of penalty, the matter was relegated to the Assessing Officer. Thereafter, the Assessing Officer, vide order dated March 29, 2010, found that 100 per cent penalty of the tax amount deserves to be imposed under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and, hence, imposed penalty of Rs. 1,61,66,230. In appeal before the Commissioner of Income-tax (Appeals), it was found by the Commissioner of Income-tax (Appeals) that before finalisation of the assessment, the assessee had filed the letter on October 2, 2006, with the Income-tax Officer, Ward 1(4) on October 3, 2006, explaining that he had received certain money from different persons in the bank account in his name and that the said persons were not co-operating and, therefore, the appellant was advised to offer to tax income based on such bank account transactions by filing the revised return. It was also recorded that the letter was inwarded, vide register No. 81 in the office of Income-tax Officer, Ward 1(4), Bhavnagar, on October 3, 2006. The contention of the Assessing Officer was considered by the Commissioner of Income-tax (Appeals) that no such letter was found. The Commissioner of Income-tax (Appeals), thereafter, found that there is no justification in levying penalty under section 271(1)(c) of the Act and, therefore, deleted the same. In the further appeal to the Tribunal, the Tribunal observed at paragraphs 12, 13 and 14 as under:

"11. It is observed that the investigation in the instant case was commenced by the Assessing Officer only on August 24, 2007, by issue of 142(1) notice. No material was brought before us to show that there was any material available with the Department prior to March 31, 2007, to show that there was some additional income then the income disclosed in the original return assessable in the hands of the assessee. In the circumstances, in our considered view, it cannot be held that the disclosure of additional income by the assessee on March 31, 2007, was after its detection by the Department.

12. We find that the decision of the hon'ble Gujarat High Court in the case of Snita Transport P. Ltd. v. Asst. CIT [2014] 42 tax-mann.com 54 (Guj) is not applicable on the facts of the instant case. In that case, the hon'ble Gujarat High Court observed that a survey was conducted in the case of the assessee on January 30, 2003, wherein the assessee accepted in the statement recorded of having debited bogus expenditure in its books of account. After the above survey and recording of statement, only the assessee disclosed additional income by way of a revised return on March 11, 2003, and on these circumstances, the hon'ble High Court found levy of penalty under section 271(1)(c) was justified. Thus, it is observed in that case, the assessee disclosed the additional income after the same was detected during the course of the survey by the Department. Whereas, in the instant case, there is no such material to show that the

Department had actually detected any income of the assessee which was not disclosed in the return prior to March 31, 2007, when the assessee disclosed its additional income.

13. On the other hand, we find that the Delhi Bench of the Tribunal in the case of CIT v. Ashok Raj Nath [2012] 19 ITR (Trib) 70 (Delhi) : [2013] 33 taxmann.com 588 (Del-Trib) has held as under (page 81 of 19 ITR (Trib)):

"18. Merely because a notice under section 143(2) had already been issued and the assessee filed revised return thereafter, disclosing additional income towards capital gains, which was not correctly shown in the original return, that was not tantamount to the detection of concealment of income under section 271(1)(c) of the Act. The hon"ble Madhya Pradesh High Court in the case of Commissioner of Income Tax Vs. S.V. Electricals Pvt. Ltd., and the hon"ble Jharkhand High Court in Commissioner of Income Tax Vs. Shri Ashim Kumar Agarwal and Smt. Yasomati Devi Agarwal, held that there the assessee surrenders his full income, though at a later stage, there was no question of any concealment on his part and, consequently, no penalty under section 271(1)(c) was leviable, and that an omission from return of income did not amount to concealment. The hon"ble jurisdictional High Court while adjudicating the issue of levy of penalty under section 271(1)(c) in the case of CIT v. Harnarain in their decision dated October 31, 2011, in I.T.A. No. 2072 of 2010 concluded that "surrender of the amount by the assessee after receipt of the questionnaire could not lead to an inference that it was not voluntary, in the absence of any material on record to suggest that it was bogus or untrue. It is further evident that there was neither any detection nor any information in the possession of the Revenue which might lead to a conclusion that there was a detection by the Revenue of concealment. Accordingly, the question of law framed is answered against the Revenue and in favour of the assessee".

19. In the instant case, the assessee voluntarily disclosed additional income during the course of assessment proceedings and paid tax thereon. In the light of the view taken in the aforesaid decisions, it cannot be said that in the case before us, additional income disclosed during the course of assessment proceedings was not voluntary or that the assessee wanted to conceal the income. Even though the revised return was found to be invalid, the Assessing Officer accepted the income as declared in the revised return and computation. The Assessing Officer did not bring any material on record that the declaration of income made by the assessee in his revised return or his explanation was not bona fide. In these circumstances, there appears to be no basis for imposition of penalty on the ground that the assessee furnished inaccurate particulars of income. Since the Revenue have not placed before us any material nor brought to our notice any contrary decision so as to enable us to take a different view in the matter, we are not inclined to interfere. Therefore, ground No. 1 in the appeal is dismissed."

3. The Tribunal found that the case is covered by the decision of the Tribunal in

the light of the other decision referred to by the Tribunal on the aspect that there was no concealment of income and the Tribunal accordingly dismissed the appeal of the Revenue. Under the circumstances, the present appeal.

4. The learned counsel for the Revenue attempted to contend that the second return which was titled as revised return was after the outer limit and, therefore, it was no revised return in the eye of law and if such factor is considered, it can be said that there was concealment of income on the part of the assessee coupled with the aspect that after the scrutiny notice was issued, the so-called revised return was filed and, therefore, he submitted that the approach of the Tribunal deserves to be further considered in the light of the question raised by the Revenue in the present appeal.

5. We may record that as per the order of the Commissioner of Income-tax (Appeals), the assessee has given justification for showing additional income in the subsequent return, vide letter dated October 2, 2006. Had the letter not inwards and it was mere say coupled with the aspect that no such letter was available as per the Assessing Officer in the file, matter may be different but when the letter was already inwards, whether it was sent to the Assessing Officer by the concerned office would not impair the aspect of bona fide or the aspect of voluntary disclosure of taxable income. Once the bona fide is found of voluntary disclosure of the income, that too in the first appeal by the Commissioner of Income-tax (Appeals), the view taken by the Tribunal, may be by referring to the decision of the Jharkhand High Court, without any reference to the letter dated October 2, 2006, inwards on October 3, 2006, would not be sufficient to conclude that the finding on the aspect of bona fide was perverse. In our view, the aspect of bona fide or non-concealment of income is essentially a question of fact. When the first appellate authority and the second appellate authority, viz., the Tribunal which is the ultimate fact finding authority after the consideration of the evidence has found that there was no concealment of the income, further scrutiny by way of reappreciation of evidence in the appeal before this court would be beyond the scope of the present appeal.

6. Under the above circumstances, we find that no substantial question of law would arise for consideration in the present appeal as canvassed by the learned counsel for the Revenue. Hence, no interference is called for to the impugned order of the Tribunal. Under the circumstances, the present appeal can be said as meritless and hence, dismissed.