

## Concealment penalty on assessee upheld on his failure to explain source of flats acquired and shown in return

**Summary – The High Court of Bombay in a recent case of Virendra K. Mehta, (the Assessee) held that where assessee claimed that flats shown in return of income was acquired by surrendering his tenancy rights but failed to prove such rights, penalty levied under section 271(1)(c) was justified**

### Facts

- The assessee in the balance sheet had declared the cost of Flat. Said flat was acquired in the previous year. The claim of the assessee was that he was a tenant of the property over which the building was constructed and in consideration for surrender of tenancy rights to enable demolition and construction of flats, the assessee was given two flats.
- However, the Assessing Officer was not satisfied with said explanation and accordingly levied penalty under section 271(1)(c).
- The Commissioner (Appeals) and the Tribunal also affirmed said order of the Assessing Officer.
- On appeal:

### Held

- The Assessing Officer, the Commissioner (Appeals) and the Tribunal all concurrently found that the explanation which was furnished by the assessee falls miserably short of the required standard in that it is not *bona fide* at all. If the assessee was a tenant of building and which was required to be pulled down and there was, therefore, an arrangement with the landlady of providing two flats, then, that was a version of the assessee which was being tested. The authorities had indicated and with sufficient clarity that the claim of tenancy is not genuine. The documents in relation to that claim are highly suspicious and the contents thereof cannot be believed. In meeting such a case, the assessee came forward and said that the registered agreement evidenced a genuine tenancy. Therefore, summons was issued to the landlady and in response to which her daughter appeared. She has stated that prior to demolition of the building, there were 5 tenants including one 'S'. That 'S' transferred the tenancy to the assessee before Court and without the knowledge of the landlady was the response of the landlady. It is, therefore, rightly held that so long as the list of authorized tenants in the building does not contain the name of the assessee then, his entering upon the property has to be probed further. This probe and in which the explanation was forwarded that one 'S', the original tenant surrendered his tenancy rights and rather relinquished the flat in favour of the landlady. Even that version was not found to be genuine.
- The Tribunal rightly held that this was a fit case for imposition of penalty. The entire explanation with regard to the tenancy rights, if surrendered has not been found to be true. Even in penalty proceedings, the assessee was not able to give a satisfactory explanation that the claim made by him in the return of income was *bona fide* and that he had declared all the material facts for

computation of income. It is in these circumstances that the penalty was held to be justified. The facts and circumstances of the instant case were clearly distinguishable from the judgments and which have been noted by the Tribunal in its order.