

## No concealment penalty if sec. 54 relief was disallowed on ground that property sold wasn't residential

**Summary – The High Court of Madras in a recent case of D.Harindran, (the Assessee) held that where assessee's claim of exemption under section 54 was disallowed on ground that property sold by assessee was not residential, however, assessee had neither concealed his income nor furnished inaccurate particulars of income, penalty imposed under section 271(1)(c) was rightly deleted by Tribunal**

### Facts

- The assessee sold residential property and purchased another property and, accordingly, claimed exemption under section 54.
- The Assessing Officer observed that the property was received by the assessee as a gift from his father, who purchased the same *vide* two deeds. At the time of purchase, the nature of the land was agricultural. Subsequently, the assessee's father obtained approval of the state Metropolitan Development Authority for sub-division of the land into four housing plots. The Assessing Officer found that there was no evidence that the superstructure was used for residential purpose and the total area of the superstructure was only 200 sq. ft. The Assessing Officer negative the claim of the assessee that the property purchased by him was residential house and, accordingly, disallowed the claim of exemption under section 54 and recomputed the long-term capital gain of the assessee at certain amount.
- The assessee accepted the order made by the Assessing Officer and paid the tax as computed. However, the Assessing Officer initiated penalty proceedings under section 271(1)(c) against the assessee.
- On appeal against said penalty order, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On further appeal, the Tribunal held that the assessee had furnished all details of sale and purchase of property and had claimed deduction under section 54/54F. The Tribunal found, on facts, that it could not be said that the assessee had furnished inaccurate particulars of income or he concealed any part of income. The Tribunal held that the assessee had furnished details of the transactions relating to the property and the sale of the property was disclosed. The Tribunal observed that the assessee had computed the capital gain and disclosed the capital gain, but claimed exemption under section 54/54F for investment in another land and property, which, according to the assessee, was a residential house. The revenue claimed that the reinvestment was in agricultural land and not residential house. Thus, he deleted the penalty.
- On revenue's appeal to High Court:

### Held

- An appeal lies under section 260A only when there is a substantial question of law. There is no question of law involved in this appeal much less any substantial question of law. The Tribunal, which is the highest fact finding body, has found on facts that the assessee had neither concealed his income nor furnished inaccurate particulars of income. Such factual findings cannot be interfered with in an appeal under section 260A.
- Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to this Court to sit in appeal over the factual findings arrived at by the Appellate Tribunal.
- The question raised in this appeal do not meet the tests laid down by the Supreme Court for holding that the questions are substantial questions of law. One is constrained to hold that there is no question of law, let alone any substantial question of law, involved in this appeal.