gave their concurrence for doing this duty they cannot be deputed on the election duty. A distinction was sought to be drawn in respect of police force or Military force that employees of any such force could be deputed anywhere. This contention again cannot be accepted. The Act is on the Statute book and every citizen is supposed to know it. The conduct of the election is one of the functions of the Government as contemplated under the provisions of this Act and if the provision provides for appointment of any person as Presiding Officer this fact is also known to every citizen of India and if he joins any service, he joins with the knowledge that he could be deputed on election duty as contemplated under the Act. The District Election Officer, therefore, could legitimately call upon any person including the petitioners to do the election duty of Presiding Officers.

(9) For the reasons recorded above, finding no merit, these writ petitions are dismissed.

J.S.T.

Before A. L. Bahri & V. K. Bali, JJ.

Smt. KRISHNA GUPTA,—*Petitioner.*

versus

THE COMMISSIONER OF WEALTH-TAX,—*Respondent.*

Wealth Tax Reference No. 5 *of* 1980.

March 4, 1992.

Wealth Tax Act—Section 18(1) (c)—*Penalty—Mens rea-Assessee purchased plot measuring* 500 *sq. yards in* 1966 *for Rs.* 50,000 *Return filed for assessment year* 1968-1969 *without declaring plot or value thereof as part of assessable wealth—Return finalised in* 1969—*Notice under section* 17 *issued subsequently—Fresh return filed disclosing purchase of plot and its value—Assessment finalised and thereafter penalty of Rs.* 50,000 *imposed under section* 18(1) (c) *for concealment of wealth—Validity of imposition of such penalty—Mens rea on assess's part to be established before imposing penalty.*

Held, that effect of amendments in section 18 of the Finance Act, 1968 would be that for amounts in dispute which is more than 25 per cent of the wealth already disclosed, there would be presumption in favour of the revenue regarding concealment thereof and in case of such wealth not tendered for assessment being less than 20 per cent of the wealth tendered earlier, the old provision will be attracted, that is, the onus would be on the Revenue to prove that there was conscious concealment of the wealth and in such a case the mere fact that the assessing authority had imposed tax on such wealth *per se* would not be sufficient to impose penalty.

(Para 16)

Held, that initially, the assessment was framed at Rs. 6,82,904. The item in dispute is of Rs. 50,000 assessed as value of the plot in West Greater Kailash, New Delhi, which was purchased on March 4, 1966. The value so determined is not in dispute. However, this value is decidedly less than 20 per cent of the wealth which was assessed for the assessment year 1968-69. In such a situation the onus would be on the revenue to prove that concealment of value of the plot was conscious on the part of the assessee and the case was not to be decided on a presumption in favour of the Revenue that the assessee had consciously concealed this wealth from assessment.

(Para 17)

Held, that each is to be decided on its own facts. No doubt, findings arrived at by the Tribunal on facts are to be accepted while deciding the question of law referred, however, when such findings are irrelevant or otherwise based on no evidence the question of law formulated can be decided on the basis of onus and implication of the provisions of law.

(Para 21)

Held, that since the Revenue did not produce any evidence in this respect, consideration of the evidence produced by the assessee or discarding the same will not prove that the Revenue has established case of concealment for imposition of the penalty. The reference is, therefore, answered in favour of the assessee that in the facts and circumstances of the present case the Income-tax Appellate Tribunal was not right in law in sustaining the penalty of Rs. 50,000.

(Para 21)

Wealth Tax Reference from the order of Shri P. K. Mehta and Shri Om Parkash Income Tax Appellate Tribunal, Amritsar Bench, Amritsar dated 30th June, 1979 *arising out of WTA No.* 150 *of* 1973-74)*and RA No.* 68 *(Chandi)* 1975-76 *referring the below said questions of law to the Hon'ble High Court for its opinion* :—

"Whether in the facts and circumstances of the case, the Income-tax Appellate Tribunal was, in law, right in sustaining the penalty of Rs. 50,000 *?"*

G. C. Sharma, Sr. Advocate with S. S. Mahajan, Advocate and Deepak Chopra, Advocate and Miss Aparana Mahajan, Advocate, *for the Appellant.*

R. P. Sawhney, Advocate with A. Acadhana Sahney, Advocate, *for the Respondent.*

JUDGMENT

A. L. Bahri, J.

(1) The following question has been referred to this Court by the Income-tax Appellate Tribunal under section 27 of the Wealth Tax Act :—

"Whether in the facts and circumstances of the case, the Income-tax Appellate Tribunal was, in law, right in sustaining the penalty of Rs. 50,000".

The aforesaid reference was made under orders of the Supreme Court. Earlier the High Court had declined the prayer of the assessee for directing the Tribunal to refer the question.

(2) The facts of the case are not very much in dispute. Brief narration is only considered necessary for deciding the reference. The assessee Smt. Krishna Gupta purchased a plot of land measuring 500 Sq. Yards from Ram Gopal Podar situated at premises No. 80/Block No. West Greater Kailash No. I, New Delhi, on March 4, 1966. The assessee filed return for the assessment year 1968-69 on November 14, 1968 without declaring the aforesaid plot of land or its value thereof as part of the assessable wealth. Assessment was finalised on February 28, 1969. Subsequently a notice under section 17 of the Wealth-Tax Act (hereinafter called 'the Act') was issued to the assessee and on October 14, 1970 the assessee filed a fresh return disclosing the purchase of aforesaid plot, as on March 31, 1968, its value was fixed at Rs. 50,000. The assessment was finalised and subsequently penalty proceedings were initiated against the assessee for concealment of the item of wealth aforesaid. The Inspecting Assistant Commissioner imposed penalty under section 18(1)(c) of the Act to the tune of Rs. 50,000,—*vide* order dated August 29, 1973. Some other items were also assessed with which we are not concerned in this reference. Against order of the Inspecting Assistant Commissioner, the assessee filed an appeal before the Tribunal. The order of the Inspecting Assistant Commissioner with respect to imposing penalty of Rs. 50,000 was maintained.

(3) According to the assessee's application filed under section 25 of the Act, return of wealth-tax for the assessment year 1968-69 was filed on November 14, 1968 declaring total wealth at Rs. 6,82,904. The said declaration was accepted by the Wealth-tax Officer, C Ward, Ludhiana,—*vide* order dated February 28, 1969. It was due to oversight that certain amounts escaped notice to be shown while filing the return which was stated to be as under :—

(a) Value of plot in Greater Kailash, New Delhi, estimated value Rs. 50,000.

(b) Value of deferred share of M/s Daulal Industrial Corporation Pvt. Ltd., Ludhiana.

(4) Shown Rs. 293.50 Paise instead of Rs. 2,936. On the total wealth declared of Rs. 6,82,904, tax paid was Rs. 1,03,100 which was left by oversight to be deducted out of the total value. This resulted in over-assessment of wealth and the mistake was against by an oversight. It was further asserted that the assesee had co-operated

with the Department and had voluntarily disclosed the assets, thus, a lenient view be taken and penalty proceedings be not initiated against her. The Inspecting Assistant Commissioner in his order Annexure 'A' observed that while going through the assessee's capital account in the books of M/s Rajan & Co., her proprietory concern, it was noticed that there was a debit of Rs. 38,500, which amount was utilised for purchase of the aforesaid plot and thus the Wealth-tax Officer came to the conclusion that the wealth of the assessee had escaped assessment and a notice under section 17(1) read with section 18(1)(c) was served on the assessee on February 14, 1969. On May 13, 1969, the assessee submitted petition pointing out that there was an over assessment of the assessee's wealth by a sum of Rs. 1,03,100 but failed to report the fact that she had not reported the ownership of New Delhi plot of land in a petition filed under section 35 of the Act. On September 29, 1970, the Wealth Tax Officer wrote to the assessee, with reference to the order of the AAC dated 18th August, 1970 for Assessment Year 1966-67 that she had purchased the plot in question and asked for the production of books of accounts. On September 23, 1970, the Wealth Tax Officer issued notice under section 16(4) of the Act calling upon the assessee to furnish description of all immovable properties owned by her as on March 31, 1968. It was at that stage that on October 14, 1970, a return of total wealth was filed showing value of the New Delhi plot of land at Rs. 50,000. For the Assessment Year 1966-67, the purchase of the plot was not shown. Again for the Assessment Year 1967-68 the same was not shown.

(5) On Appeal the Appellate Tribunal in order dated May 31, 1975 with respect to the aforesaid item held as under in paras 5, 6 and 7 :—

> "An addition of Rs. 50,000 had been made at the stage of reassessment under section 17(1). Wealth-tax Act, as being the value of a plot purchased by the assessee on 4th March, 1966 located in Greater Kailash, New Delhi. The original return was filed in the instant case on 14th November, 1968. The assessment was completed on 28th February, 1969 in respect of a net wealth of Rs. 6,82,904 as against the returned net wealth of Rs. 6,80,093. Notice under section 17(1), Wealth-tax Act, had been served on the assessee on 12th August, 1970 and the revised wealth-tax return in compliance of the said notice was filed on 14th October, 1970. The said revised return did include the Greater Kailash plot. The assessee's explanation for

her failure to include the said asset in her original return dated 14th October, 1968 is that she made the omission inadvertantly and that she had disclosed this asset firstly in her revised wealth-tax return dated 10th July, 1969 filed in back assessment proceedings relating to assessment years 1966-67 and 1967-68. There is a controversy between the parties as to whether the section 17 Wealth-tax Act, notices relating to the assessment year 1966-67 and 1967-68 had or had not mentioned the Greater Kailash plot. The Department was unable to show that such a mention had been made in those notices and thus we are inclined to accept the assessee's version that she disclosed the asset in question on 10th July, 1969 without the same having been detected earlier by the Department. The assessee pressed this argument in support of her contention that the mistake constituted by the non-inclusion of that asset in the original return relating to the assessment year 1968-69 was a *bona fide* one.

"We are, however, of the view that the fact that the Department had not earlier detected the asset in question before its disclosure by the assessee on 10th July, 1969, as aforesaid, is just one of the consideration relevant for determining the question of existence of *mens rea* on the part of the assessee. The fact remains that the assessee had purchased the plot in question on 4th March, 1966 for Rs. 38,500 after withdrawing a sum little higher than that from her capital account. Admittedly there was no dispute about the assessee's title or ownership of the said plot on 31st March, 1968, the relevant valuation date. The assessee's explanation before us is that her old accountant one Shri B. D. Sharma left service in December 1966, and that he was succeeded by the new accountant Shri K. L. Suri in April 1967; that there arose some confusion about the valuation dates relevant to the assessment year 1966-67 and 1967-68; that the Wealth-tax Officer had completed the assessment for the assessment year 1966-67 treating 31st December, 1965 as the relevant valuation date; and he had completed the assessment for the assessment year 1967-68 treating not 31st December, 1966, but 31st March, 1967 as the relevant valuation date; that the plot in question having been purchased in 1966 was not shown in the wealth-tax return for the assessment year 1966-67—31st December, 1965, being the relevant valuation date; that the plot was again not shown

in the return for the assessment year 1967-68 for the reason that the new accountant looked into the account of 12 months from 31st March, 1967 backward to find whether there had been any outgoing from the capital account and for the rest he adopted the wealth-tax return for the assessment year 1967-68 that the said mistake or omission of the plot in question come to be repeated in the return filed for the assessment year 1968-69.

The story put forward before us does have a ring of plausibility. There is, however, no material on record to show firstly as to the succession of accountant Shri B. D. Sharma by accountant Shri K. L. Suri, as aforesaid, secondly as to the omission by Shri K. L. Suri, to look into the assessee's capital account for the period for 1st January, 1967 to 31st March, 1967. What is significant in this regard is that the assessee had furnished on 8th August, 1973 a written explanation during the penalty proceedings before the learned Inspecting Assistant Commissioner and the explanation as put forward before us has not been spelt out in the letter dated 8th August, 1973 addressed to the Inspecting Assistant Commissioner. When specifically questioned on the aspect, the assessee's authorised representative admitted that the explanation before the Inspecting Assistant Commissioner merely stated that so far as the non-inclusion of the Greater Kailash plot in the wealth-tax return was concerned, there was no *mala fide* intention on the assessee's part to counceal any wealth. We are of the opinion that the assessee's failure to spell out the present explanation before the Inspecting Assistant Commissioner substantially detracts from the value and credibility thereof. It is again significant that the assessee has not shown as to under what circumstances she detected her mistake, when she included the said asset in the revised wealth-tax returns dated 10th July, 1969, furnished in respect of the assessment years 1966-67 and 1967-68. The assessee's learned representative more than once referred us to observations of the Appellate Assistant Commissioner of wealth-tax made in the appeal order against the back-assessment to wealth-tax regarding assessment year 1966-67 to emphasise as to how the assessee justifiably did not include the plot in question in her original return for the assessment year 1966-67. The learned Appellate Assistant Commissioner's

order, we are afraid, does not, in our opinion lend support to the assessee's case so far as the concealment of the plot in question in the original return for the assessment year 1968-69 is concerned. We are of the view that the assessee's failure to include the said plot in her return, as aforesaid, calls for imposition of penalty for concealment of particulars."

(6) It is on the facts and circumstances, as found by the authorities, that the question aforesaid has been referred to this Court. In order to appreciate the legal position, several judgments have been referred by learned counsel for the parties relating to cases under the Income-tax Act. Some of them are before amendment of Section 271 of the Income-tax Act and some after the amendment. Relevant extract of Section 18 of the Wealth Tax Act as in force on 1st April, 1969 is reproduced below :—

"18. Penalty for failure to furnish return, to comply with notices and concealment of assets, etc.—(1) if the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals), Chief Commissioner or Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person :—

(a) xxx xxx xxx xxxx xxxx

(b) —— —— —— —— ——

(c) has concealed the particulars of any assets or furnished inaccurate particulars of any assets or debts; he or it may, by order in writing 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 wealth-tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount representing the value of any assets in respect of which the particulars have been concealed or any assets or debts in respect of which inaccurate particulars have been furnished.

Explanation 1 :—Where :—

(i) the value of any assets returned by any person is less than seventy-five per cent. of the value of such asset as determined in an assessment under section 16 or

section 17 (the value so assessed being referred to hereafter in this explanation as the correct value of the asset), or

(ii) the value of any debt returned by any person exceeds the value of such debt as determined in an assessment under section 16 or section 17 by more than twenty-five per cent of the value so assessed (the value so assessed being referred to hereafter in this Explanation as the correct value of the debt), or

(iii) the net wealth returned by any person is less than seventy-five per cent, of the net wealth as assessed under section 16 or section 17 (the net wealth so assessed being referred to hereafter in this Explanation as the correct net wealth),

then, such person shall, unless he proves that the failure to return the correct value of the asset or, as the case may be, the correct value of the debt or the correct net wealth did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of assets or furnished inaccurate particular of assets or debts for the purposes of clause (c) of this sub-section.

Explanation 2 :—For the purposes of clause (iii) :

(a) the amount representing the value of any assets in respect of which the particulars have been concealed or any assets in respect of which inaccurate particulars have been furnished, shall be the value of such assets determined for the purposes of this Act as reduced by the value thereof, if any declared in the return made under section 14 or section 15;

(b) the amount representing the value of any debts in respect of which inaccurate particulars have been furnished, shall be the amount by which the value of such debts declared in the return made under section 14 or section 15 exceeds the value thereof determined for the purposes of this Act."

(7) The word 'deliberately' before the words "furnished inaccurate particulars" was omitted from sub-clause (c) of sub-section (1) of Section 18 of the Act as originally existed,—*vide*

amendment which came into force with effect from April 1, 1965. The plot was purchased in March 1966 and the relevant assessment year is 1968-69 as the revised return was filed during this year. It is amended provision of Section 18 as reproduced above which is to be applied to the facts of the case in hand.

(8) Earlier the Supreme Court had the occasion to consider the provisions of Section 28(1) (c) of the Income-Tax Act, relating to imposition of penalty, in *Commissioner of Income-tax, West Bengal and another* v. *Anwar Ali* (1), and had held as under :—

> "Proceedings under section 28 of the Income-tax Act, 1922, are penal in character. The gist of the offence under section 28(1)(c) is that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income and the burden is on the department to establish that the receipt of the amount in dispute constitutes income of the assessee. If there is no evidence on the record except the explanation given by the assessee, which explanation has been found to be false, it does not follow that the receipt constitutes his taxable income. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false does not necessarily give rise to the inference that the disputed amount represents income. It cannot be said that the finding given in the assessment proceedings for determining or computing the tax is conclusive. However, it is good evidence. Before penalty can be imposed the entirely of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars."

It was further held :—

> "———that in the absence of cogent material evidence, apart from the falsity of the respondent's explanation, from his income or had deliberately furnished inaccurate particulars in respect of the source and that the disputed amount was a revenue receipt, the penalty could not be imposed."

(1) (1970) 76 I.T.R. 696.

While dealing with the penalty provisions of Orissa Sales Tax Act, 1947, the Supreme Court in *Hindustan Steel Limited* v. *State of Orissa* (2), observed that :—

> "An order imposing penalty for failure to carry out a satutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so."

In a case covered by Section 271 (1) (c) of the Income-tax Act, 1961, *Anwar Ali's* case (supra) was followed by the Supreme Court in *Anantharam Veerasinghaiah and Co.* v. *Commissioner of Income-Tax, A.P.*, (*S.C.*) (3), and it was observed :—

> "Before a penalty can be imposed the entirety of the circumstances must be taken into account and must point to the conclusion that the disputed amount represents income or deliberately furnished inaccurate particulars. The mere falsity of the explanation given by the assessee is insufficient without there being, in addition, cogent material or evidence from which the necessary conclusion attracting a penalty could be drawn."

(9) *Anwar Ali's* case was considered by this Court in *Commissioner of Income-tax* v. *Malawa Ram Handa and Sons* (4), and relied upon. Two other decisions were cited which were distinguished on the ground that *Anwar Ali's* case was not brought to the notice. Those decisions are :—*Shiv Narain Khanna* v. *Commissioner of Income-tax* (5), and *Kedar Nath Sanwal Dass* v. *Commissioner of Income Tax* (6). In the Income-tax Act, 1961 penalty provision is contained in Section 271. The Supreme Court considered Section 271 (1) (a) of the Income-tax Act, 1961 in *Gujarat Travancore Agency* v. *Commissioner of Income-tax, Kerala* (7). It was held as under :—

> "In the case of section 271(1)(a) of the Income-tax Act, 1961, which provides that a penalty may be imposed if the

(2) (1972) 83 I.T.R. 26.
(3) (1980) 123 I.T.R. 457.
(4) (1984) 19 Tax man 26 (Punjab and Haryana).
(5) (1977) 107 I.T.R. 542.
(6) (1978) 111 I.T.R. 440.
(7) (1980) I.T.R. 455.

Income-tax Officer is satisfied that any person has without reasonable cause, failed to furnish the return of total income, what is intended is a civil obligation, while in the case of section 276-C of the Act, which provides for punishment if a person wilfully fails to furnish in due time the return of income, what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276-C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element *mens rea* is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence."

(10) The decision of the Kerala High Court in *Commissioner of Income-tax, Kerala* v. *Gujarat Travancore Agency* (8), was affirmed.

(11) The matter was considered by the Full Bench of this Court in *Vishwakarama Industries* v. *Commissioner of Income-tax, Amritsar-I* (9). The amended provision was taken into consideration and with respect to omission of 80 per cent of the wealth the burden was held to be on the assessee to explain, otherwise presumption was to be drawn that it was a case of concealment. With respect to the remaining category of cases———old principal governing the imposition of penalty was to be applied. It would be useful to reproduce the relevant passages from this judgment which are as under :—

"The significant thing about the change made in clause (c) of section 271 (1) is the designed omission of the word "deliberately" therefrom, whereby the requirement of a designed furnishing of inaccurate particulars of income was obliterated. The legislature has deleted the word in order to bring it in harmony and in consonance with the intent and purpose of the Expln. added to the section. As long as the word "deliberately" existed in clause (c) a conscious mental elemental was required to be established thereunder and inevitably the burden of

(8) (1976) 103 I.T.R. 149.
(9) (1982) 135 I.T.R. 652.

proving thereof was on the department. When the legislature contemplated a reversal, or a change in the burden of proof, by the addition of the Expln. thereto, it necessarily neutralised the provisions of clause (c) by taking out therefrom the word "deliberately" and the consequential requirement of a designed mental element."

It was further held :—

"The language of the Explanation indicates that for the purposes of levying penalty the legislature has made two clear-cut divisions. This has been done by providing a strictly objective and an almost mathematical test. The touchstone therefor is the income returned by the assessee as against the income assessed by the department which is designated as "the correct income". A case where the returned income is less than 80 per cent of the assessed income can be squarely placed into one category. Where, however, such a variation is below 20 per cent that would fall in the other category. To the first category, where there is a larger concealment of income, the provisions of the Explanation become at once applicable with the resultant attraction of the presumptions against such an assessee. However, those falling in the second category, where the variation between the returned income and the assessed income is less than 20 per cent, would be out of the net of Explanation and continue to be governed by the law as it existed prior to the amendment of section 271(1) (c) by the Finance Act, 1964.

Once the Explanation is held to be applicable to the case of an assessee, it straightaway raises three legal presumptions, viz. :—

(i) that the amount of the assessed income is the correct income and it is in fact the income of the assessee himself;

(ii) that the failure of the assessee to return the correct assessed income was due to fraud; or

(iii) that the failure of the assessee to return the correct assessed income was due to gross or wilful neglect on his part."

In view of the Full Bench decision, referred to above, it is not considered appropriate to refer to other decisions of this Court rendered prior to the same.

(12) Learned counsel for the petitioner, the assessee also referred to some decisions of the other High Courts which may briefly be noticed. The Bombay High Court in *D. M. Dahanukar* v. *C.I.T.* (10), observed that mere omission will not amount to concealment or deliberate furnishing of inaccurate particulars unless such an omission was intentional or made by the assessee with a desire to hide or conceal the income to avoid imposition of tax. The Madras High Court in *M. Hussain Ali and sons* v. *Commissioner of Income-tax* (11), held that omission *per se* was not sufficient to impose penalty unless it was deliberate or wilfully false. The present case is to be considered in the prospects of the rule of law as laid down in the authorities mentioned above.

(13) The history of Section 18 of the Wealth Tax Act is almost similar to that of Section 271 of the Income-tax Act. Almost similar amendments were made in these Acts in respect of penalty provisions. Under these provisions, as they stood before their amendment by the Finance Act, 1968, the scale of penalty imposable for concealment or understatement of wealth was a minimum amount of 20 per cent of the wealth-tax sought to be evaded and a maximum of 150 per cent of the amount of such wealth-tax. It was also provided, in substance, in the Explanation to section 18(1), prior to its amendment, that where the net wealth declared by a person in his return of net wealth fell short of the wealth as assessed (either in original assessment proceedings or in proceedings for assessing or reassessing wealth escaping assessment) by more than 20 per cent of the assessed wealth, such person would be deemed to have concealed the particulars of assets or furnished inaccurate particulars of assets or debts, unless he proved that the short-fall did not arise from any fraud or any gross or wilful neglect on his part. Thus, the onus of proof in penalty proceedings for concealment or understatement of wealth shifted from the revenue to the taxpayer where the net wealth returned by him fell short of the net wealth assessed by more than 20 per cent of the assessed wealth. Under this provision, the onus of proof shifted from the revenue to the taxpayer only where the net wealth, in the aggregate, as declared in the return, fell short of the net wealth assessed by more than 20 per cent of the assessed amount, and not otherwise, even though the value of any individual asset comprised in the net wealth might

(10) (1967) 65 I.T.R. 280.
(11) 58 I.T.R. 787 (Madras).

have been understated in the return by more than 20 per cent or the value of that asset determined on assessment.

(14) The Finance Act, 1968, has made the following changes in the abovementioned provisions :—

(i) The scale of penalty leviable for concealment or understatement of wealth (through concealment of assets or understatement of the value thereof or over-statement of the value of a debt) has been increased to a minimum of an amount equal to the concealed wealth or the amount by which the wealth has been found to be understated, and a maximum of twice that amount.

(ii) The provision in the Explanation to section 18 (1) prior to its amendment, under which the onus or proof in penalty proceedings for concealment or understatement of wealth shifted from the revenue to the taxpayer where the net wealth declared in the return fell short of the net wealth assessed by more than 20 per cent of the assessed wealth, has been substituted by a new provision. Under the new provision, the onus of proof in penalty proceedings for concealment or understatement of wealth lies on the taxpayer where :—

(a) the value of any asset as declared by him in the return falls short of the value determined on assessment by more than 25 per cent of the assessed amount; or

(b) the value of any debt declared in the return exceeds the value of the debt as determined on assessment by more than 25 per cent of the assessed amount; or

(c) the amount of the net wealth declared in the return falls short of the net wealth determined on assessment by more than 25 per cent of the assessed amount (as against more than 20 per cent of the assessed amount under the provision prior to its amendment).

(15) In the above-mentioned cases, the tax-payer will be liable to imposition of penalty unless he proves that the understatement of the value of his assets or overstatement of the value of his debts or understatement of the amount of his net wealth, as the case may be, did not arise from any fraud or any gross or wilful neglect on his part.

(16) The assessment is the present case is for the year 1968-69 as the assessee moved the application under section 25 of the Act on November 14, 1969 which is Annexure 'G' in the paper-book. The provisions of the law, as in existence during the relevant assessment year, ———are to be taken into consideration, which in the present case would be after enforcement of the Finance Act, 1968,—*vide* which necessary amendments in section 18 of the Act were made, as referred to above. The effect of the same would be that for the amounts in dispute is more than 25 per cent of the wealth already disclosed, there would be presumption in favour of the revenue regarding concealment thereof and in case of such wealth not tendered for assessment being less than 20 per cent of the wealth tendered earlier, the old provision will be attracted, that is, the onus would be on the Revenue to prove that there was concious concealment of the wealth and in such a case the mere fact that the assessing authority had imposed tax on such wealth *per se* would not be sufficient to impose penalty.

(17) Initially, the assessment was framed at Rs. 6,82,904. The item in dispute is of Rs. 50,000 assessed as value of the plot in West Greater Kailash, New Delhi, which was purchased on March 4, 1966. The value so determined is not in dispute. However, this value is decidedly less than 20 per cent of the wealth which was assessed for the assessment year 1968-69. In such a situation the onus would be on the revenue to prove that concealment of value of the plot was concious on the part of the assessee and the case was not to be decided on a presumption in favour of the Revenue that the assessee had consciously concealed this wealth from assessment of the Tribunal is perused minutely, it would be noticed that the Tribunal, while dealing with another item had rightly come to the conclusion that there was no *mens rea* on the part of the assessee to conceal that item and thus did not impose penalty. In para 4 of the order-Annexure 'B', it was observed as under :—

> "We, therefore, hold that there is no material on record to show that there was a *mens rea* on the part of the assessee so far as the non disclosure of the aforesaid 15th part in the Hindu undivided family's property was concerned or that there was any conscious concealment by her on the particulars of the said asset when she filed the original return. We find accordingly."

(18) The Tribunal, however, was conscious of the legal position that *mens rea* on the part of the assessee was to be established before imposing penalty. This was so stated while dealing with the

disputed item of Rs. 50,000 in para 4 as already reproduced above. However, subsequently there being no evidence produced by the Revenue and rejecting the evidence produced by the assessee, the Tribunal held that the assessee had failed to include the said plot in her return which called for imposition of penalty for concealment of particulars. The reading of the order gives an impression that the Tribunal thought that it was for the assessee to establish that there was no *mala fide* intention on her part to conceal the aforesaid wealth and the assessee had failed to prove the same. This approach is not correct in view of the rule of law as laid down by the Supreme Court in *Anwar Ali's* case (supra) which was subsequently affirmed by the Apex Court in *Anantharam Veerasinghaiah's* case (supra). The Full Bench of this Court in *Vishwakarama Industries'* case (supra) has also held likewise.

(19) Learned counsel for the Revenue has relied upon a decision of this Court in *Mahavir Metal Works* v. *Commissioner of Income-tax* (12), in support of the contention that when the assessee himself has filed revised return disclosing the income which was not assessed that would be a case of concealed income. There is no force in this contention. The decision referred to is distinguishable on facts. That was a case of filing revised return with respect to income from undisclosed sources, whereas present is a case of filing revised return in respect of wealth of property acquired from disclosed sources.

(20) Learned counsel for the Revenue has argued that when the decision of the Tribunal is based on the findings recorded on facts, no question of law arises in the case and the reference should be answered accordingly. In support of this contention reference has been made to some of the decision which are as under :—

(1) *India Cements Ltd.* v. *Commsisioner of Income-tax, Madras* (13); and

(2) *Karnani Properties Ltd* v. *Commissioner of Income-tax, West Bengal* (14).

Learned counsel for the assessee referred to the decision of the Division Bench of this Court in *Commissioner of Income-tax* v. *Chandan Lal Niamat Singh* (15), wherein the reference made at the

(12) (1973) 93 I.T.R. 513.
(13) (1966) 60 I.T.R. 52.
(14) (1971) 82 I.T.R. 547.
(15) (1984) 18 Taxman 428 (Punjab and Haryana).

instance of the Commissioner of Income-tax was declined on the ground of finding of fact. In that case the Tribunal had declined to levy penalty under section 271(1)(c) of the Income-tax Act on the ground that the Revenue had failed to prove that there was conscious concealment.

(21) After giving due consideration to the cases referred to above, in our view each case is to be decided on its own facts. No doubt, findings arrived at by the Tribunal on facts are to be accepted while deciding the question of law referred, however, when such findings are irrelevant or otherwise based on no evidence, the question of law formulated can be decided on the basis of onus and implication of the provisions of law. The finding in paragraph 6 in the order of the Tribunal that present is not a case of the detection of the assets on the part of the Department and that the case related to disclosure of the value of the house voluntarily by the petitioner, being there, in such a case penalty provisions could be resorted to only if the Revenue had further to prove existence of *mens rea* on the part of the assessee in the matter of deliberate or concious concealment of the wealth. The case is not covered by the Explanations. Since the Revenue did not produce any evidence in this respect, consideration of the evidence produced by the assessee or discarding the same will not prove that the Revnue has established case of concealment for imposition of the penalty. The reference is, therefore, answered in favour of the assessee that in the facts and circumstances of the present case the Income-tax Appellate Tribunal was not right in law in sustaining the penalty of Rs. 50,000. No costs.

J.S.T.

Before : A. L. Bahri & V. K. Bali, JJ.

DR. MOHAMAD SHABIR, ETC.,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 18403 *of* 1991

Dated April 9, 1992

Constitution of India, 1950—*Art.* 226—*Admission—Advertisement issued for admission to M.D.S. course on existing rules—Petitioner eligible for admission under eligibility clause—Participated in interview conducted by selection Committee—Thereafter fresh advertisement issued changing course from* 2 *years to* 3 *years—Eligibility*