

(1980) 04 AHC CK 0033

Allahabad High Court

Case No: Income-tax Reference No. 894 of 1978

Commissioner of
Income Tax

APPELLANT

Vs

Ram Niwas Agrawal

RESPONDENT

Date of Decision: April 11, 1980

Acts Referred:

- Income Tax Act, 1961 - Section 147, 271(1)

Citation: (1980) 125 ITR 432 : (1980) 4 TAXMAN 341

Hon'ble Judges: Satish Chandra, C.J; H.N. Seth, J

Bench: Division Bench

Advocate: R.K. Gulati and A. Gupta, for the Appellant; None, for the Respondent

Judgement

H.N. Seth, J.

For the assessment year 1962-63, the ITO acting u/s 271(i)(c) of the I.T. Act, imposed a penalty of Rs. 25,031 on the assessee. Eventually, in appeal, the Income Tax Appellate Tribunal quashed the imposition of that penalty. At the instance of the revenue, this court called upon the Tribunal to state the case and to refer the following question for the opinion of this court:

" Whether, on the facts and in the circumstances of the case, was the Tribunal justified in cancelling the penalty imposed on the assessee for the assessment year 1962-63 ? "

2. The Tribunal has accordingly stated the case for our opinion.

3. It appears that in the course of assessment proceedings for the assessment year 1963-64, the ITO came across certain hundi loans alleged to have been taken by the assessee for the purposes of its business. When the ITO started enquiry into the genuineness of those credits, the assessee surrendered an amount of Rs. 55,000, representing such hundi loans, to be added to its total income for the assessment

year 1963-64. That amount was accordingly added to its total income and the assessment for that year was completed. Thereafter, the AAC imposed a penalty of Rs. 30,000 on the assessee u/s 271(1)(c) of the I.T. Act for the assessment year 1963-64. Against that penalty, the assessee filed an appeal before the Tribunal and contended that although an amount of Rs. 55,000 was surrendered by the assessee for addition for that assessment year, the whole of such hundi loans did not relate to the accounting year relevant for that assessment year. Some of the credits representing hundi loans appeared in the books of account of the assessee in the earlier accounting years. It was submitted that an amount of Rs. 15,000 related to the assessment year 1959-60, an amount of Rs. 10,000 to the assessment year 1961-62, an amount Rs. 20,000 to the assessment year 1962-63, and that fresh credits during the accounting year relevant for the assessment year 1963-64, amounted to only Rs. 10,000. Thus, it was pleaded before the Tribunal that the entire amount of Rs. 55,000, though surrendered for assessment for the assessment year 1963-64, did not represent the concealed income of that year. The plea raised by the assessee prevailed with the Tribunal and it held that for the assessment year 1963-64, the assessee was liable to penalty on the concealed income of Rs. 10,000 only.

4. After the Tribunal reduced the penalty for the assessment year 1963-64, the ITO reopened the assessments for the years earlier to 1963-64 and included in the total income of the assessee for those years, the hundi loans which were claimed by the assessee before the Tribunal to relate to those years. In this process, he added an amount of Rs. 20,000 to the total income of the assessee for the assessment year 1962-63, after reopening the original assessment under the provisions of Section 147. Thereafter, he took fresh proceedings for imposition of penalty u/s 271(1)(c) against the assessee for the year 1962-63, and referred them to the IAC, which resulted in the imposition of the penalty amounting to Rs. 25,031.

5. The assessee again took the matter up in appeal before the Tribunal. The Tribunal opined that as the assessee had surrendered the amount of Rs. 55,000 for being included in the income of the assessee for the year 1963-64, and the department had, after accepting the surrender, taxed that income in that year, there was no question of the ITO reopening the assessment for earlier years and to treat any part of the surrendered income as part of the income of the earlier years. Consequently, the imposition of penalty for earlier years was not at all justified and the same was quashed.

6. Main question that arises for consideration in this reference is, whether the reason given by the Tribunal for holding that penalty was not imposable for the year 1962-63, in respect of the amount which, according to the assessee itself, represented the income of that year, sustainable. According to the Tribunal, once the department had accepted the surrender of Rs. 55,000 representing the income of the year 1963-64 and had taxed the assessee accordingly, it could not go back

upon the acceptance and reopen the assessment for earlier years. We are unable to subscribe to this view of the Tribunal. It is well settled that even if an income or part thereof has been assessed to tax in a wrong year it does not take away the jurisdiction of the I.T. authorities to assess the same in the correct year. The assessee, after surrendering the income in the year 1963-64, had himself gone back upon the claim made by him and had himself put up the plea that the part of the income surrendered by him had accrued to him in the year 1962-63 as well. In this view, the department could not be held bound by the acceptance of the surrender made by the assessee. The reason given by the Tribunal for holding that the ITO was not justified in reopening the assessments for the earlier years is, therefore, not sustainable.

7. Apart from this if the action of the ITO in reopening the assessment for the year 1962-63, was not correct, it was open to the assessee to have challenged that assessment by way of an appeal. The assessee did not file any such appeal and submitted to the reassessment made for the year 1962-63. In these circumstances, it was not open to the Tribunal in penalty proceedings to say that the reopening of the assessment for the year 1962-63 was not justified.

8. It is not disputed that if the assessment proceedings had been correctly reopened for the year 1962-63, all other conditions requisite for taking proceedings u/s 271(1)(c) are complied with. In this view, we answer the question referred to us by the Tribunal, in the negative and in favour of the department. As no one has appeared on behalf of the assessee, we make no order as to costs.