

(1984) 08 AHC CK 0037

Allahabad High Court

Case No: Income-tax Reference No. 118 of 1976

Additional Commissioner of
Income Tax

APPELLANT

Vs

Solar Chemicals (P.) Ltd.

RESPONDENT

Date of Decision: Aug. 28, 1984

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 148, 271(1)

Citation: (1985) 44 CTR 300 : (1984) 150 ITR 410

Hon'ble Judges: N.D. Ojha, J; Anshuman Singh, J

Bench: Division Bench

Advocate: M. Katju, for the Appellant; Bharatjee Agarwal, for the Respondent

Final Decision: Disposed Of

Judgement

Ojha, J.

The assessee-respondent, M/s. Solar Chemicals Private Ltd., Kanpur, is a private limited company. It was incorporated on August 30, 1960, and carries on business of manufacture of sodium sulphate. Earlier, this business was being carried on by a partnership firm, M/s Solar Chemicals. Subsequently the respondent took over this business and started manufacturing sodium sulphate on January 1, 1960. It filed its return for the assessment year 1963-64 showing an income of Rs. 5,604. However, the assessment was made u/s 143(3) of the I.T. Act, 1961 (hereinafter referred to as the "Act"), on an income of Rs. 17,628. Subsequently on coming to know that some hundi loans and unexplained share capital appearing in the balance-sheet had not been shown by the respondent in the return, a notice was issued u/s 148 of the Act. In response to that notice, the respondent appeared and filed its return. Subsequently, however, it moved an application before the IAC offering to be assessed on hundi loans amounting to Rs. 1,52,000 and unexplained capital amounting to Rs. 5,075. On this basis, the reassessment was completed on a total income of Rs. 1,84,145. Penalty proceedings were thereafter initiated against the

respondent and necessary notice in this behalf was issued to it. The respondent appeared before the IAC and it was submitted on its behalf that in view of the voluntary disclosure made by it, the penalty should be waived. According to it, no material facts had been suppressed by it because the hundi loans appeared in the balance-sheet which was attached to the return of income. The explanation of the respondent was, however, not accepted by the IAC and a sum of Rs. 30,000 was imposed as penalty. On an appeal preferred by the respondent against the aforesaid order, the Tribunal mainly relying on the decision of the Supreme Court in [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali](#), took the view that simply because reassessment proceedings were finalised on the basis of a voluntary disclosure by the respondent, it could not be held liable to pay penalty. According to the Tribunal, the Explanation to Section 271(1)(c) of the Act was not attracted to the facts of the instant case. The penalty was accordingly deleted. An application was thereupon made by the CIT before the Tribunal for making a reference to this court u/s 256(1) of the Act which was rejected by the Tribunal. The CIT then made an application to this court u/s 256(2) of the Act and by order dated August 28, 1975, passed in Income Tax Application No. 121 of 1974, this court directed the Tribunal to draw up a statement of the case and refer the following question of law :

"Whether, on the facts and in the circumstances of the case, the assessee was liable to penalty u/s 271(1)(c) of the Income Tax Act, 1961."

2. The Tribunal thereupon drew up a statement of case and referred the aforesaid question of law for the opinion of this court by its order dated January 19, 1976.

3. It was urged by Shri Markandey Katju, appearing for the CIT, that the decision of the Supreme Court in the case of [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali](#), was clearly distinguishable. According to him that was a case where the explanation submitted by the assessee had been disbelieved and it was held that the mere circumstance that the explanation submitted by the assessee had been disbelieved could not be sufficient to impose penalty. According to Shri Katju, a case where there was a voluntary disclosure, it stood on a different footing. In such a case, there was an admission of the assessee that he had initially suppressed the income which was subsequently disclosed and the admission could be relied on to impose penalty because the same constituted good evidence of the fact that there was suppression of income. In support of this submission, reliance was placed by him on the decision of a Division Bench, of the Calcutta High Court in [Commissioner of Income Tax Vs. P.B. Shah and Co. \(Pvt.\) Ltd.](#), . In that case it was held that even though the entire onus is on the Revenue to prove that the cash credits represented the concealed income of the assessee, yet, where, in the statement of the case, it had been stated that the assessee was willing to have the same treated as its undisclosed income, then in penalty proceedings the Department had no further duty to show that that sum was the assessee's

concealed income. A similar view was taken by the Kerala High Court in [India Sea Foods Vs. Commissioner of Income Tax, Kerala,](#) . In these two cases, however, the decision of the Supreme Court in the case of [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali,](#) was not noticed.

4. Reliance was then placed by counsel for the applicant on a decision of the Madras High Court in [Commissioner of Income Tax Vs. Krishna and Co.,](#) , where it was held that in a case where the assessee himself has admitted that the amount represented his own income, no further, evidence would be necessary to show that it was the amount which represented his income and it represented his concealed income. The assessee in the instant case having readily agreed to the inclusion of the amount as his income, the levy of penalty was justified. The learned judges of the Madras High Court in taking the aforesaid view relied on a decision of the Bombay High Court in [Western Automobiles \(India\) Vs. Commissioner of Income Tax, Bombay City-I, Bombay,](#) , where the decision of the Supreme Court in [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali,](#) , was distinguished by the Bombay High Court by observing that that decision was not applicable to a case where the addition was not by a mere rejection of the explanation of the assessee but on account of an admission of the assessee that the amounts may be added as its income. It was also held by the Bombay High Court (p. 1056):

"In our view, whether a revised return is filed or an admission is made before the Income Tax Officer in the course of original assessment proceedings would seem to make little difference. The basis in both the cases is the same, viz., that the assessee agreed to accept the amounts as his income from business for the year in question. Once this true position is established, it would appear that it would be sufficient for the department to seek to discharge the onus in the penalty proceedings by relying upon this admission...."

5. For the assessee on the other hand, reliance has been placed, apart from the decision of the Supreme Court in [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali,](#) , upon the decision of a Division Bench of this court in [Commissioner of Income Tax Vs. Net Ram Ram Swarup,](#) . In that case, during the assessment proceedings for assessment years 1955-56 and 1956-57, the ITO had found that the assessee had received certain cheques for which information was not available and there were certain suspicious cash, credits. The assessee surrendered for assessment amounts of Rs. 28,097 and Rs. 13,800 for the two years. The ITO sought to impose penalty u/s 28(1)(c) of the Indian Act, 1922, but the Tribunal considering the facts of the case came to the conclusion that penalty could not be imposed as the burden of proving deliberate concealment of income had not been satisfactorily discharged by the Income Tax department. On a reference to this court, relying on the decision of the Supreme Court in the case of [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali,](#) , it was held that the order of

the Tribunal was correct and that the assessee was not liable to pay penalty u/s 28(1)(c). It was further held that mere failure of an assessee to prove the nature and source of an income would not lead to the inference that he has deliberately concealed the income or has furnished inaccurate particulars thereof. The Income Tax department's burden of proving that the assessee's case falls u/s 28(1)(c) would not be discharged in such a case and penalty cannot be imposed.

6. Reliance was also placed by counsel for the respondent on the decision of a Division Bench of the Gujarat High Court in [Commissioner of Income Tax, Gujarat-III Vs. Vinaychand Harilal](#), . The facts of that case were that for the assessment year I 967-68, the assessee did not include a sum of Rs. 88,455 being the amount for which he had encashed certain demand drafts. His explanation that this amount belonged to the HUF of which he was the karta and not himself was not accepted by the ITO who included the said amount in the total income of the assessee u/s 69A of the I.T. Act, 1961. The ITO subsequently initiated penalty proceedings u/s 271(1)(c) against the assessee. In the appeal against the assessment before the AAC, the assessee conceded that the amounts invested in the purchase of demand drafts belonged to the assessee and may be assessed in his hands. On its basis the AAC proceeded on the footing that the peak amount of Rs. 60,000 should be treated as income of the assessee for the year in question. In penalty proceedings, the assessee, however, denied that the addition agreed to by him represented his concealed income and that he had made the admission only to avoid lengthy litigation and contended that no penalty was imposable because the case against the assessee was the result of disbelieving the assessee's version regarding his income. His contention was rejected by the IAC and penalty was imposed. The appeal of the assessee was, however, allowed by the Tribunal and the order levying penalty was set aside. On a reference, the Gujarat High Court took the view that the admission of the assessee before the AAC referred to above did not amount to admission of the concealment of the income of the relevant year and was not sufficient to levy penalty on the assessee and that the Revenue must prove that the receipt of the amount in dispute constituted income of the assessee for the relevant year. Reliance was placed on the decision of the Supreme Court in the case of [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali](#), .

7. [Gumani Ram Siri Ram Vs. Commissioner of Income Tax](#), was also a case where the assessee had made a statement surrendering a certain squared up amount and on its basis an order of assessment was passed. Subsequently, penalty was also imposed on the assessee. It was held in that case by the Punjab High Court that penalty could not be levied merely because the cash deposits were surrendered by the assessee, unless there was material on the record to show that the surrendered item was his income. A similar view was taken by the Jammu and Kashmir High Court in [Additional Commissioner of Income Tax, Etc. Vs. Sadiq Ali and Bros.](#),

8. On the precise question as to whether an order imposing penalty could be passed on the basis of an admission of the assessee making a voluntary disclosure of his income, there seems to be an apparent divergence of opinion among various High Courts. We are, however, bound by the decision of this court in the case of [Commissioner of Income Tax Vs. Net Ram Ram Swarup](#), .

9. In view of the foregoing discussion, our answer to the aforesaid question is in the negative, i.e., in favour of the assessee. The assessee will be entitled to its costs assessed at Rs. 200.