

(1953) 04 AHC CK 0017

Allahabad High Court

Case No: Misc. Case No. 276 of 1950

Dwarka Prasad
Sheokaran Das,
Kanpur

APPELLANT

Vs

Commr. of Income Tax,
U.P., Lucknow

RESPONDENT

Date of Decision: April 1, 1953

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Income Tax Act, 1922 - Section 28

Citation: AIR 1954 All 123 : (1953) 24 ITR 410

Hon'ble Judges: Malik, C.J; V. Bhargava, J

Bench: Division Bench

Advocate: R.L. Gulathe, for the Appellant; J. Swarup, for the Respondent

Final Decision: Dismissed

Judgement

V. Bhargava, J.

This is a reference u/s 66(1), Income Tax Act in which the Income Tax Appellate Tribunal has referred the following two questions for our decision:

"(a) Whether the findings of the Appellate Assistant Commissioner in assessment proceedings are relevant for the purpose of deciding the penalty proceedings; and

(b) If so, whether they operate as "res judicata"?"

2. The assessee in this case is a firm consisting of four partners. During the assessment proceedings for the assessment year 1943-44, the Income Tax Officer held that income to the extent of Rs. 17,815/15/3 had been concealed by the assessee in his returns and added this sum when calculating the income liable to be assessed to tax. On 9-11-1944,

the Income Tax Officer also issued a notice u/s 28(1)(c), Income Tax Act calling upon the assessee to show cause why penalty should not be levied against him. The assessee, on 16-11-1944, gave his explanation but no fresh evidence was adduced in support of this explanation. The Income Tax Officer considered his own previous finding during the assessment proceedings and held that there had been concealment of income and imposed the maximum penalty permissible u/s 28. The assessee appealed to the Appellate Assistant Commissioner and the Appellate Tribunal but failed and on his request the two questions mentioned above have now been referred for our decision.

3. When the appeal was heard by the Tribunal the Tribunal refused to allow the counsel for the assessee to argue the appeal on merits and show that there had been no concealment on the ground that the finding, which had been given in the assessment proceedings and which had become final, operated as "res judicata" in these penalty proceedings u/s 28. It is in these circumstances that the second question arose for reference to this Court.

4. So far as the first question is concerned, we cannot see how the assessee can contend that the findings in the assessment proceedings out of which the penalty proceedings have arisen are not at all relevant for the purpose of deciding the penalty proceedings. The Income Tax Officer is entitled to act on all materials that come before him when he is dealing with assessment proceedings or when he is dealing with penalty proceedings u/s 28. The findings of the assessment proceedings were available to him and he could certainly use those findings as materials for arriving at the findings in the penalty proceedings. There is nothing anywhere in any law laying down that such material is to be inadmissible in the penalty proceedings. This question must, therefore, be answered in the affirmative.

5. On the second question the principle has been so frequently laid down that it does not appear to be necessary to enter into any detailed discussion. The Income Tax Officer is not a Court and no question arises of a previous decision operating as "res judicata" in subsequent proceedings before the Income Tax Officer. The principle of "res judicata" is only applicable to suits where there are two parties coming up before a Court for adjudication of their disputes and not to the proceedings for assessment or imposition of penalty under the Income Tax Act. This principle was clearly enunciated by one of us in the case of -- [Kamlapat Moti Lal Vs. Commissioner, Income Tax](#), . It has also been laid down by various other High Courts, but since we are following the view which, has already been taken in this Court it is not necessary to cite those cases.

6. Apart from the question whether the Income Tax Officer is a Court or not, it is also clear that findings given during assessment proceedings cannot operate as "res judicata" in proceedings for imposition of penalty as the considerations that apply for giving a decision in the two proceedings are not identical. In the assessment proceedings, the Income Tax Officer, after hearing the evidence on specified points, assesses the total income of the assessee and all that is necessary for him to find out is what items can be

treated as income of the assessee. It is not at all necessary for him to give a finding that there has been concealment of the particulars of his income or that the assessee has deliberately furnished inaccurate particulars of such income, as is necessary for imposing a penalty u/s 28(1)(c). Since the facts which have to be found are entirely different, findings given during the assessment proceedings cannot operate as "res judicata" in proceeding for imposition of penalty where entirely different facts have to be found.

7. The second question must, therefore, be answered in the negative.

8. Since we are answering one question in favour of the assessee and the other in favour of the department we make no orders as to costs.