

(1964) 08 KL CK 0028

High Court Of Kerala

Case No: O. P. No. 1738 of 1963

Ramankutty

APPELLANT

Vs

Income Tax Officer, Aleppey

RESPONDENT

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**Date of Decision:** Aug. 4, 1964**Acts Referred:**

- Income Tax Act, 1922 - Section 28(1)(c), 33A(2)

**Citation:** (1965) KLJ 522**Hon'ble Judges:** P. Govindan Nair, J**Bench:** Single Bench**Advocate:** P.C. Chacko, for the Appellant; C.T. Peter, for the Respondent**Final Decision:** Dismissed

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### Judgement

P. Govindan Nair, J.

The question raised by the writ applicant, an assessee to income tax for the assessment year 1960-61, is whether penalty has been properly imposed on him by the income tax Officer purporting to act u/s 28 (1) (c) of the income tax Act, 1922, and further whether the order passed by the Commissioner of Income Tax on the revision petition taken by the petitioner from the order imposing penalty suffers from any infirmity in that the procedure adopted has violated the principles of natural justice. The petitioner in his return indicated a loss of Rs. 2,476/-. On scrutiny of the accounts this was found to be a false statement and therefore, the petitioner was asked to show cause why an estimate should not be made. The petitioner then filed a revised return showing a profit of 19,000/- and odd rupees and his auditors conceded before the income tax Officer that the first return was clearly wrong. The petitioner has been assessed on the basis of the second return filed by him. It was in the above circumstances that the penalty was imposed on the ground that he concealed his income. Counsel on behalf of the petitioner has contended that the fact that an assessment has been made is not sufficient to establish that there has been concealment of income to enable the income tax Officer to impose a penalty

u/s 28 (1) (c). I am aware of the principle, supported by judicial decisions, that proceedings in an assessment where the income tax Officer may be justified in estimating the income taking into account the credit entries in the account books which have not been satisfactorily explained, would not by itself justify an imposition of penalty on the ground that there has been concealment of income. In other words, the imposition of penalties being in the nature of quasi-criminal orders there must be a greater degree of proof before orders imposing penalties on an assessee can be passed. This principle, I do not think, can have any application to a case where the petitioner himself has admitted that his first return indicating a loss of Rs. 2,476/- is an incorrect one, not to say that it contained a false statement, and that his real income is 19,000/- and odd rupees. I do not think anything more is required to prove that he has concealed his income in the first return he filed. The imposition of penalty therefore is justified and I see no grounds to interfere.

2. The only other point to consider is whether the Commissioner in passing the order on the revision petition moved by the writ applicant should have given a personal hearing to the petitioner. The relevant section is Section 33 A (2) of the Indian income tax Act, 1922. The section at any rule, doc:-, not provide that there should be a personal hearing of the Revision Petitioner. No other Section or rule has been brought to my notice. And it has been laid down by the Supreme Court that the question of violation of the principles of natural justice must be decided with due regard to the statutory provisions and the rules governing the matter. A personal hearing is not always essential to satisfy the requirement of natural justice. It is only in such cases where rules and sections demand that there should be a personal hearing, it can be said that there has been any violation of the principles of natural justice. A reference may be made to the decision of the Supreme Court reported in A.K. Gopalan v The State of Madras (1950--1. S. C. R. 88 at p. 124). Their Lordships said:

Again, I am not prepared to accept the contention that a right to be heard orally is an essential right of procedure even according to the rules of natural justice. The right to make a defence may be admitted, but there is nothing to support the contention that an oral interview is compulsory.

This has been followed by the decision of the Supreme Court reported in [F.N. Roy Vs. Collector of Customs, Calcutta](#), . No decision of the Supreme Court has been cited where a different view has been taken. It is unnecessary to refer to the other cases decided by the High Courts that have been quoted before me because I think, the matter is governed by the dictum in the above decision of the Supreme Court. I therefore reject the second contention urged by counsel for the petitioner as well. In the result, the writ petition has to be dismissed, and I do so and direct the petitioner to pay the costs of the respondents.