
Bapulal Ramchandra Vs Commissioner of Income Tax

Miscellaneous Civil Case No. 95 of 1978

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 17, 1981

Acts Referred:

Income Tax Act, 1961 " Section 271(1)

Citation: (1982) 137 ITR 23 : (1981) 6 TAXMAN 378

Hon'ble Judges: R.K. Vijayvargiya, J; G.G. Sohani, J

Bench: Division Bench

Advocate: J.W. Mahajan, for the Appellant; S.C. Bagadiya, for the Respondent

Judgement

Vijayvargiya, J.

By this reference u/s 256(1) of the I.T Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate

Tribunal, " Indore Bench, Indore, has referred the following questions of law for the opinion of this court:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the penalty of Rs. 17,300 imposed

by the IAC of Income Tax by applying the Explanation to Section 271(1)(c) of the Income Tax Act, 1961, for the A.Y. 1969-70 ?

(2) Whether, on the facts and in the circumstances of the case, the penalty in terms of the Explanation to Section 271(1)(c) could be imposed

without allowing the assessee a specific opportunity to meet the charge of a deemed concealment of income or furnishing inaccurate particulars of

such income ?

2. The facts giving rise to this reference as set out in the statement of the case are as follows; The assessee is a registered firm carrying on business

in groundnuts, cotton seeds and sugar. The accounting period for the relevant assessment year 1969-70 is the year ending Diwali 1968. The

assessee has its head office at Ratlam and a branch at Jhabua. During the course of the assessment proceedings the ITO found that the remittances

made by the branch to the head office were entered on different dates in the branch office and in the head office. The ITO did not accept the

assessee's explanation that the difference in dates was on account of the inadvertence of its partner at Jhabua and that the shortage of the cash

balance in the branch office was made up by using cash available with Shaskiya Sewak Sahakari Samithi, Jhabua. The ITO made an addition of

Rs. 86,130 towards the total income as income from undisclosed sources. The assessee preferred an appeal against the order of assessment. The

AAC partly allowed the appeal and reduced the additions to Rs. 56,130. On further appeal by the assessee the Income Tax Appellate Tribunal set

aside the order of the AAC and remanded the case to him for disposing of the appeal after giving an opportunity to the assessee to meet the

remand report of the ITO. After the remand the AAC maintained the addition of Rs. 17,300 to the income of the assessee from undisclosed

sources. The assessee preferred a further appeal to the Tribunal against the order of the AAC. However, the Tribunal dismissed the assessee's

appeal. In the meantime, the ITO initiated penalty proceedings u/s 271(1)(c) of the Act for concealment of income. The proceedings were referred

to the IAC, Indore, who by his order dated March 20, 1973, imposed a penalty of Rs. 56,200 on the assessee by invoking the Explanation to

Section 271(1)(c) of the Act. Aggrieved by the order imposing the penalty the assessee preferred an appeal before the Tribunal. The Tribunal

upheld the imposition of the penalty but reduced the amount to Rs. 17,300. At the instance of the assessee, the Tribunal has referred the aforesaid

questions of law for the opinion of this court.

3. Shri J. W. Mahajan, learned counsel for the assessee, contended that the IAC having held that the charge of having concealed its income or

having furnished inaccurate particulars of its income does not lie against the assessee and the Tribunal not having upset the finding of the IAC, the

Tribunal was not justified in law in maintaining the order of the IAC imposing the penalty by having recourse to the provisions of the Explanation to

Section 271(1)(c) of the Act. He contended that a recourse to the Explanation u/s 271(1)(c) of the Act, could be had only if it was independently

held in the penalty proceedings that the assessee had concealed its income or furnished inaccurate particulars of income.

4. Shri S. C. Bagadiya, learned counsel for the revenue, contended that as the total income returned by the assessee was less than 80% of the

correct income, the Explanation to Section 271(1)(c) of the Act came into play and as the assessee failed to prove that the failure to return the

correct income did not arise from any fraud or gross or wilful neglect on his part he would be deemed to have concealed the particulars of his

income or furnished incorrect particulars of his income and, therefore, the Tribunal was fully justified in imposing the penalty.

5. Having heard learned counsel for the parties we have come to the conclusion that the contentions of the learned counsel for the assessee are

well founded. The IAC in his order imposing the penalty specifically held that the charge whether the assessee had concealed its income did not lie

against the assessee, and the second charge, viz., whether the assessee can be regarded as having furnished inaccurate particulars of its income or

not also cannot be driven home against the assessee. According to the IAC, the third charge as mentioned in para. 7 of the order was to the effect

that whether the assessee could be deemed to be guilty of any of the foregoing two charges within the meaning of the provisions of the Explanation

to Section 271(1)(c). He came to the conclusion that the returned income being less than 80% of the correct income the assessee shall be deemed

to have concealed his income or furnished inaccurate particulars thereof because he failed to prove that the failure to return the correct income did

not arise from any fraud or any gross or wilful neglect on his part. The IAC imposed the penalty placing reliance upon the Explanation to Section

271(1)(c) of the Act. The Tribunal also did not set aside the finding of the IAC that the charge of concealment of income or furnishing inaccurate

particulars of income was not proved against the assessee. The Tribunal quoting in detail the decision of the Andhra Pradesh High Court in

Commissioner of Income Tax Vs. Anantharam Veerasingaiah and Co., , held as follows in para 12 of its order:

While the Andhra Pradesh High Court has held that the charge of concealment is to be brought home in the case referred to above, to our mind

the assessee's case becomes all the more weaker when we consider the Explanation to Section 271(1)(c). The conduct of the assessee is clearly

motivated by fraud and, hence, the penal provisions are rightly attracted and the IAC is fully justified in imposing the penalty. He has correctly

pointed out that the assessee had available with it cash sources other than those of the books of the business at the head office or at the branch

office, resort to which was made whenever exigencies of business made it necessary to do so and that the manipulations, which have been made,

are proved to the hilt and the assessee has failed to show otherwise.

6. The observations of the IAC referred to by the Tribunal had reference to the third charge whether the assessee could be deemed to be guilty of

concealment of income or furnishing inaccurate particulars of income within the meaning of the provisions of the Explanation to Section 271(1)(c)

of the Act. Thus, no finding has been recorded by the IAC and the Tribunal in the penalty proceedings that the assessee had concealed its income

or furnished inaccurate particulars of its income. In the absence of such a finding there was no question of imposing penalty on the assessee for

concealment of income or furnishing inaccurate particulars of income and the Explanation to Section 271(1)(c) of the Act was not attracted to such

a case.

7. The contention of the learned counsel for the revenue, that after the introduction of the Explanation to Section 271(1)(c) of the Act in a case

where the total income returned by any person is less than 80% of the correct income, i. e., income assessed, it is not necessary in the penalty

proceedings to record a finding that the assessee has concealed his income or furnished inaccurate particulars of income and that in such a case, on

the basis of the assessment order, penalty can be imposed if the assessee fails to prove that the failure to return the correct income did not arise

from any fraud or gross or wilful neglect on his part, is not well founded. The law laid down in this regard by the Supreme Court in Commissioner

of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , Commissioner of Income Tax, Kerala Vs. N.A. Mohamed Haneef, and The

Commissioner of Income Tax Madras Vs. Khoday Eswarsa and Sons, as applicable prior to the introduction of the Explanation to Section 271(1)

(c) of the Act"" still holds good and applies except as stated below even after the introduction of the Explanation, In this connection, it is useful to

refer to the following observations of their Lordships of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs.

Anwar Ali, :

Another point is whether a finding given in the assessment proceedings that a particular receipt is income after rejecting the explanation given by

the assessee as false would, prima facie, be sufficient for establishing, in proceedings u/s 28, that the disputed amount was the assessee's income.

It must be remembered that the proceedings u/s 28 are of a penal nature and the burden is on the department to prove that a particular amount is a

revenue receipt. 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 entirety 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.

8. The language of Section 271(1)(c) of the Act has not been changed. Therefore, before an assessee is held liable for the imposition of penalty u/s

271(1)(c) of the Act it has to be independently found in the penalty proceedings that the disputed amount represented income. After it is held that

the amount which was concealed by the assessee was the income of the assessee and if the quantum of the concealed income falls within the

Explanation to Section 271(1)(c) of the Act the burden to prove the fact that there was a conscious concealment on the part of the assessee which

was formerly on the department has now been placed on the assessee by the Explanation and the assessee is required to prove that the failure to

return the correct income did not arise from any fraud or gross or wilful neglect on his part. The view which we have taken finds support from a

Division Bench decision of the Allahabad High Court in Addl. Commissioner of Income Tax Vs. Rawalpindi Flour Mills (P.) Ltd., with which we

respectfully agree. The decision in Commissioner of Income Tax Vs. Sankarsons and Company, , relied upon by the learned counsel for the

revenue, does not support the contention advanced by him. We are, therefore, of the opinion that as the IAC has given a finding that the charge of

concealment of income or furnishing inaccurate particulars of income against the assessee was not established and this finding has not been upset by

the Tribunal, the Tribunal was not justified in upholding the imposition of penalty against the assessee relying upon the provision of the Explanation

to Section 271(1)(c) of the Act. Our answer to question No. 1 referred to us, therefore, is in the negative and against the revenue.

9. The learned counsel for the parties agree that question No. 2 does not arise out of the order of the Tribunal. Moreover, in view of our answer to

question No. 1 it is not necessary to answer question No. 2 referred to us by the Tribunal. We, therefore, decline to answer question No. 2.

10. The reference is answered accordingly. In the circumstances of the case, the parties shall bear their own costs of this reference.