

(2002) 11 MAD CK 0081

Madras High Court

Case No: T.C. No. 58 of 1998 (Reference No. 53 of 1998)

The Commissioner of Income
Tax

APPELLANT

Vs

P. Govindasamy

RESPONDENT

Date of Decision: Nov. 21, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 139, 271, 271(1)

Citation: (2003) 179 CTR 566 : (2003) 263 ITR 509

Hon'ble Judges: N.V. Balalsubramanian, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: Pushya Sitharaman, for the Appellant; K. Ramagopal, for the Respondent

Judgement

K. Raviraja Pandian, J.

Pursuant to the order of this Court dated 8.7.1997 made in T.C.P. No. 180 of 1996, the Income Tax Appellate Tribunal, C Bench, Madras, stated the case and referred the following questions of law for the opinion of this Court. The questions referred to are as follows:

"1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in cancelling the penalty levied u/s 271(1)(c) of the Income Tax Act for the assessment year 1980-81? and

2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in failing to appreciate the fact that the assessee's acceptance of the income assessed was not voluntary one?"

2. The facts of the case are as follows:

For previous year ended on 31.3.1980 with reference to the assessment year 1980-81, the assessment was completed ex parte on 28.2.1983 since the assessee failed to file his return within the time allowed u/s 139 of the Income Tax Act,

determining the assessee's income at Rs. 14,076/-. The assessee filed the return on 28.3.1983 disclosing a loss of Rs. 79,097/-. On appeal by the assessee, the Commissioner of Income Tax (Appeals) set aside the exparte assessment order and directed the Assessing Officer to make fresh assessment. While making fresh assessment, the Assessing Officer determined the total income of the assessee for the said assessment year at Rs. 4,81,320/- by making certain additions. The additions so made in the course of fresh assessment were as follows:

- "(a) Lease rent from Odeon Theatre : Rs. 55,466/-
- (b) Sundry cash credits occurring in : 1,50,000/-
the cash-flow statement filed by the
assessee.
- (c) Estimated addition towards insuffi- : 14,000/-
cient drawings for personal expenses
- (d) Estimated addition towards unaccounted : 15,000/-
investment in jewellery.
- (e) Alleged loan from Century Investment : 5,03,110/-"
Corporation

As regards the addition of Rs. 5,03,110/- as shown in item (e) above, it was the case of the Department that the Century Investment Corporation was not a genuine firm as the firm consisted of three partners, the wife, the son and daughter of the assessee and two minors admitted to the benefit of the partnership. The assessee carried the assessment order dated 14.3.1986 on appeal to Commissioner of Income Tax (Appeals), but ultimately did not press the appeal by filing a letter to the effect that the assessee thought it best to purchase peace with the Department and found no alternative save to accept the amount of Rs. 5,03,110/- at his hands and thereby the appeal was dismissed on the strength of the letter of the assessee as stated above. The Assessing Officer while making the fresh assessment on 14.3.1986 had put the assessee on notice for initiation of penalty proceedings u/s 271(1)(c) of the Income Tax Act. The assessee by his letter dated 9.3.1988 explained that he had come forward with a settlement with the Commissioner by offering the additions made in the assessment at his hands. Such offer was made under the Amnesty Scheme and therefore prayed the penalty proceedings may be dropped. The Assessing Officer brushed aside the explanation offered by the assessee on the footing that the case was not covered by Amnesty Scheme. The Assessing Officer was of the view that the offer of the assessee of the cash credit aggregating to RS. 1,50,000/- for assessment at the assessment stage and withdrawal of the appeal relating to loan amount of RS. 5,03,110/- before the Commissioner of Income Tax

(Appeals) amount to admission and thus the assessee has concealed the particulars of income. On that basis, the Assessing Officer levied penalty in a sum of Rs. 3,21,510/- u/s 271(1)(c) of the Act. On appeal by the assessee, as per the statement of case, (the order of the Commissioner of Income Tax (Appeals) in penalty proceedings was not made available to us.), the Commissioner of Income Tax (Appeals) held that there was concealment only in respect of two counts viz., (1) the alleged loan aggregating to Rs. 5,03,110/- from Century Investment Corporation and (2) unexplained investment of Rs. 15,000/- in jewellery. Accordingly, the Commissioner of Income Tax (Appeals) directed to delete the penalty levied in respect of the low drawings and the understatement of lease rent from Odeon Theatre. The assessee questioned the order of the Commissioner of Income Tax (Appeals) before the Tribunal. The Tribunal following the decision of the Supreme Court in Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi, and also the decision of this Court in the case of Commissioner of Income Tax Vs. Pioneer Engineer Syndicate, deleted the penalty by allowing the appeal on the ground that the Department has not made out a case for levy of penalty u/s 271(1)(c) of the act.

3. The learned counsel appearing for the Revenue has contended that the Supreme Court in the case of M/s. K.P. Madhusudhanan Vs. Commissioner of Income Tax, Cochin, has held that Shadilal Sugar's case is not good law after the addition of explanation to Section 271 of the Income Tax Act. Hence, the reliance of the Tribunal on the Shadilal Sugar's case and thereby deleting the penalty is not sustainable in law. He further relied on the decision of the assessee's own case in P. Govindaswamy Vs. Commissioner of Income Tax.

4. On the other hand, Mr. Ramagopal, learned counsel appearing for the assessee has submitted that in order to come to the conclusion of concealment of income on the part of the assessee, so as to invoke Section 271(1)(c) of the Act, the revenue has to prove the mens rea of quasi criminal offence on the part of the assessee, but there is absolutely no finding whatsoever in this case by the revenue. He also relied on the decision of Shadilal Sugar's case stated supra and of the decision of this Court in Commissioner of Income Tax Vs. S.I. Paripushpam, and of the Madhya Pradesh High Court, Indore Bench in the case of Commissioner of Income Tax Vs. Suresh Chandra Mittal.

5. We heard the arguments of the learned counsel on either side and perused the materials on record.

6. The relevant portion of Section 271 reads thus:

"271(1) If the Income Tax Officer or the Appellate assistant Commissioner, in the course of any proceedings under this Act, is satisfied that any person - ...

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, - ...

(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income :

Provided that, if in a case falling under clause (c), the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income Tax Officer shall not issue any direction for payment by way of penalty without the previous approval of the Inspecting Assistant Commissioner:

Explanation 1. - Where in respect of any facts material to the computation of the total income of any person under this Act, -

(A) such person fails to offer an explanation or offers an explanation which is found by the Income Tax Officer or the Appellate Assistant Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate.

Then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed:

Provided that nothing contained in this Explanation shall apply to a case referred to in clause (B) in respect of any amount added or disallowed as a result of the rejection of any explanation offered by such person, if such explanation is bona fide and all the facts relating to the same and material to the computation of his total income have been disclosed by him."

7. On consideration of the above provision, particularly, the Explanation, the Supreme Court in K.P. Madhusudhanan's case referred supra, while considering the submission on behalf of the assessee that the assessee's acceptance to the additions to his income to buy peace did not follow that the amount that was agreed to be added was concealed income and the revenue was required to prove the mens rea of quasi criminal offence, has held that the above proposition was undoubtedly the law laid down by the Supreme Court in Shadilal Sugar's case. Because of the said decision, the explanation to section 271 was added and by reason of the insertion of that explanation, the view taken in Shadilal Sugar's case can no longer be said to be applicable. Hence, the explanation inserted to Section 271 assumes much significance to decide the issue. The explanation requires that in respect of any facts material to the computation of the total income of any person under the Act, if such person failed to offer an explanation or offers explanation, which is found by the Income Tax Officer or the Appellate Assistant Commissioner to be false

or such person offers an explanation, which he is not able to substantiate, then the amount added or disallowed in computing the total income of such person as a result thereof shall on the Income Tax Officer or the Appellate Assistant Commissioner being satisfied that the person has concealed the particulars of income or furnished inaccurate particulars of such income be deemed to represent the income in respect of which particulars have been concealed. The proviso to the explanation further provides that nothing contained in that explanation shall apply to a case, where such person offers an explanation, which he is not able to substantiate in respect of any amount added or disallowed as a result of rejection of any explanation offered by such person, if such explanation is bona fide, and all the facts relating to the same and material to the computation of his total income have been disclosed by him.

8. So far as the facts of the present case are concerned, the explanation offered by the assessee in response to the notice issued for invoking the penalty provision u/s 271(1)(c) has been just brushed aside by the Assessing Officer on the simple ground that the explanation offered would not come within the purview of Amnesty. The Commissioner of Income Tax (Appeals) also, as stated in the statement of case, has held that there was concealment only on two counts, viz., (1) in respect of alleged loan aggregating to Rs. 5,03,110/- from Century Investment Corporation and (2) unexplained investment of Rs. 15,000/- in jewellery and passed an order directing to delete the penalty in respect of low drawings and understatement of lease rent from Odeon Theatre. There is absolutely no finding whatsoever from the authorities concerned, as contemplated under the Explanation and in the proviso that the explanation offered was false or the explanation had not been substantiated by the assessee and as to whether the explanation offered is bona fide or not as stated in the proviso to the Explanation. The Tribunal though granted the relief in favour of the assessee, by relying on Shadilal Sugar's case, has not appreciated the matter in the perspective as stated in the Explanation, but however come to a conclusion, correctly, in our view, deleting the penalty.

9. The decisions relied on by the assessee viz., Commissioner of Income Tax Vs. S.I. Paripushpam, and Commissioner of Income Tax Vs. Suresh Chandra Mittal, are all decisions rendered following the decision of the Supreme Court in Shadilal Sugar's case, which require no further discussion in view of Madhusudhanan's case.

10. The reliance of the case of the assessee himself reported in P. Govindaswamy Vs. Commissioner of Income Tax, referred above to sustain the penalty by the revenue, in our view, is misplaced reliance, in the sense, that it was a case in which there was search on the premises of the assessee and on the basis of the seized material during the search, the Assessing Officer came to the conclusion that there was either concealment of income or inaccurate particulars of such income and consequently, he made an addition of Rs. 2 lakhs for the assessment year 1981-82 to the assessee's income as income from the undisclosed source and he further added

a sum of Rs. 1,11,000/- being the interest income. On appeal by the assessee, the Commissioner of Income Tax (Appeals), though confirmed the addition of Rs. 2 lakhs, however deleted the addition of Rs. 1,11,000/- being the interest income added to his income. On further appeal before the Tribunal, the assessee conceded in respect of addition of Rs. 2 lakhs to his income. On Revenue's appeal in respect of the addition deleted by the Commissioner of Income Tax (Appeals), the revenue conceded before the Tribunal that out of the sum of Rs. 1,11,000/-, only a sum of Rs. 61,042/- being the interest income traceable in the hands of the assessee. On that basis, the Tribunal passed an order. Thereafter, penalty proceedings were initiated on the concealed income to the tune of Rs. 2 lakhs from undisclosed sources and also interest amount to a tune of Rs. 64,042/-. In that factual situation, this Court has held that the imposition of penalty on the concealed amount was in order, but as narrated above, the facts of the present case are at total variance, in the sense, that there is no search and seizure and nothing was unearthed by the authorities. On the basis of the cash flow statement of the assessee, the additions referred to above were made in this case, which the assessee offered for assessment for purchasing peace. The explanation added to section 271 has not been considered in that case. Hence, the said case cannot have any impact in the decision arrived at in this case.

11. The assessee did not challenge the addition in the assessment proceedings as the assessee was pursuing the Amnesty Scheme, though it was found later that the Amnesty Scheme was not applicable. As far as the penalty proceedings are concerned, the assessee has offered explanation, and the assessing officer has not considered the explanation, but proceeded with the matter and levied penalty on the basis that the assessee had agreed to the addition in the assessment proceedings. The assessing officer, as fairly admitted by the learned senior standing counsel for the Revenue, has not considered the applicability of Explanation-1 to section 271(1) of the Act and given a finding regarding the same. Admittedly, clause (A) of Explanation-1 to section 271(1) of the Act is not applicable as the explanation given by the assessee was not found to be false. The assessing officer has also not considered clause (B) of Explanation-1 to section 271(1) of the Act and recorded a finding that the assessee is not able to substantiate his explanation and also failed to prove that the explanation is bona fide. He has also not recorded any finding that all facts relating to the explanation and materials to the computation of total income have not been disclosed by the assessee. We have already seen that the Revenue has not furnished us a copy of the order of the Commissioner of Income Tax (Appeals) upholding the order of penalty.

12. As far as the Appellate Tribunal is concerned, a specific contention was raised on behalf of the assessee that Explanation-1 to section 271(1) of the Act was not applicable, but the contention was rejected by the Appellate Tribunal. The Appellate Tribunal therefore proceeded on the basis that Explanation-1 to section 271(1) of the Act was applicable to the facts of the case though in the notice for penalty no specific reference was made to the Explanation-1 to section 271(1) of the Act. It is

only in that background, the Appellate Tribunal has proceeded and held that there was no concealment of income, on the facts of the case. The Appellate Tribunal found that the amount was surrendered as a part of settlement under the Amnesty Scheme which the assessee preferred before the Commissioner of Income Tax. Though the Appellate Tribunal has also referred to the decision of the Supreme Court in [Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi,](#), it came to the conclusion that the penalty was not exigible.

13. A reading of the order of the Appellate Tribunal shows that the Appellate Tribunal was satisfied that there was no concealment of income on the part of the assessee. No doubt, the Appellate Tribunal should have worded the order in a better manner or in a better fashion. The Appellate Tribunal, after having found that the Explanation-1 to section 271(1) of the Act would be applicable should have recorded a finding that all the ingredients of clause (b) of Explanation-1 to section 271(1) of the Act are not satisfied for the levy of penalty. It is not a case where the Appellate Tribunal was not conscious of the applicability of Explanation-1 to section 271 of the Act, but it is a case where the Appellate Tribunal found that Explanation-1 to section 271 of the Act would be applicable, and the Appellate Tribunal proceeded on the basis and held that there was no concealment of income. Since the Appellate Tribunal has proceeded on the basis and held that there was no concealment of income, we hold that the finding is a finding of fact. Accordingly, we answer both the questions of law referred to us in the affirmative, against the Revenue and in favour of the assessee. No costs.