
Commissioner of Income Tax, Andhra Pradesh Vs Chandulal

R.C. No. 19 of 1979

Court: Andhra Pradesh High Court

Date of Decision: March 27, 1984

Acts Referred:

Income Tax Act, 1961 – Section 260, 271, 271(1), 274, 69

Citation: (1985) 48 CTR 23 : (1985) 152 ITR 238

Hon'ble Judges: Y.V. Anjaneyulu, J; B.P. Jeevan Reddy, J

Bench: Division Bench

Advocate: M.S.N. Murthy, for the Appellant; K. Jagannatha Raju, for the Respondent

Judgement

Anjaneyulu, J.

The Income Tax Appellate Tribunal has referred the following question of law for the opinion of this court under s. 256(1) - of

the I.T. Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in quashing the order of penalty ?

2. The matter relates to the Income Tax assessment year 1968-69. The assessee filed a return declaring income of Rs. 2,321 from business.

During the course of investigation, the ITO found that, in the previous year relevant to the assessment year 1968-69, the assessee advanced loans

to five individuals aggregating to Rs. 6,900. These loans were not recorded in the assessee's book of account. The ITO observed that the peak

amount of the loans advanced to the five individuals was Rs. 3,200 in as much as there were some repayments by the individuals and fresh

advances. The ITO also found that a sum of Rs. 5,000 advanced to one Shri Miraz Ali Khan on August 10, 1967, was also not entered in the

assessee's books of account. The ITO further found that a sum of Rs. 1,000 received from Smt. Jamalunnisa Begum by way of commission was

also not accounted in the books. Thus, the ITO found that money-lending loans to the extent of Rs. 8,200 were not entered in the assessee's

accounts apart from a sum of Rs. 1,000 received by way of commission from Smt. Jamalunnisa Begum. The ITO included the sum of Rs. 9,200 in

the assessee's total income for the assessment year 1968-69. The assessee carried the matter in appeal, but the assessment was confirmed and the

matter became final.

3. Before the completion of the assessment proceedings, the ITO initiated proceedings for the levy of penalty for concealment of income or for

furnishing inaccurate particulars of such income under s. 271(1)(c) of the I.T. Act, 1961. The assessee explained that the money-lending advances

of Rs. 8,200 referred to above were made from out of the assessee's winnings in card games. It does not appear that any specific explanation was

offered in respect of the sum of Rs. 1,000 received from Smt. Jamalunnisa Begum by way of commission. The ITO declined to accept the

assessee's explanation that the money-lending advances of Rs. 8,200 were made from out of the assessee's winnings from card games.

Accordingly, the ITO levied Rs. 9,200 under s. 271(1)(c) which is equivalent to the amount of income considered to have been concealed by the

assessee.

4. The assessee appealed against the levy of penalty to the AAC who confirmed the order of the ITO levying the penalty and dismissed the appeal.

5. The assessee carried the matter in second appeal to the Income Tax Appellate Tribunal and raised a number of contentions both legal and

factual. The Tribunal declined to accept most of the contentions raised by the assessee, but finally accepted one contention and that was regarding

the validity of the penalty notice issued. The assessee urged before the Tribunal that the penalty notice issued by the ITO was invalid in as much as

the ITO did not strike out inappropriate portions of the notice. The notice required the assessee to show cause why penalty should not be levied

for concealment of income and also for furnishing inaccurate particulars of such income. In the notice issued by the ITO, both the items mentioned

above, were kept without either of them being struck off. The assessee urged before the Tribunal that the penalty in this case was levied for alleged

concealment of income and on account of the ITO not striking out the portion relating to furnishing of inaccurate particulars of the income, the

notice issued by the ITO was rendered invalid and, consequently, the order of penalty is invalid in law. Reliance was placed by the assessee on the

decision of the Kerala High Court in N.N. Subramania Iyer Vs. Union of India (UOI) and Another, . The Tribunal found that the decision of the

Kerala High Court supported the contention urged by the assessee. The Tribunal eventually held that the penalty notice issued by the ITO suffered

from a serious infirmity of vagueness and ambiguity. The Tribunal characterised the notice issued by the ITO as a "whimsical notice", following the

principle laid down by the Kerala High Court. In that view of the matter, the Tribunal held the penalty proceedings to be invalid and quashed the

penalty order passed by the ITO. The Commissioner then applied for and obtained the present reference for the opinion of this court.

6. The learned standing counsel, Sri M.S.N. Murthy, contended that the penalty proceedings in the present case could not be considered to be

invalid by reason of the fact that the ITO failed to strike out the inappropriate portions. According to the learned counsel, penalty was levied in the

present case not only for concealment of income but also for furnishing inaccurate particulars of such income. The learned counsel contended that

the explanation that the money-lending advances were made from out of the winnings from card games amounted to furnishing of inaccurate

particulars of the assessee's income and, consequently, there is no necessity to strike out any portion of the notice issued under s. 274 by the ITO.

The learned standing counsel, therefore, urged that the Tribunal erred in cancelling the penalty proceedings as invalid.

7. The learned counsel for the assessee, Sri Jagannatha Raju, supported the order of the Tribunal cancelling the order of penalty and placed

reliance on the judgment of the Kerala High Court referred to above.

8. We are unable to subscribe to the view that by reason of the ITO not striking out inappropriate portions of the notice issued under s. 274, the

notice issued was rendered invalid. In the first place, it has to be borne in mind that the notice issued under s. 274 is not prescribed under the rules.

It is a notice administratively devised for the purpose of putting the assessee in the knowledge of the fact that the ITO initiated proceedings for levy

of penalty in order to enable him to show cause why penalty should not be levied. So long as the object of putting the assessee in the awareness

and knowledge of the initiation of the penalty proceedings is accomplished by the issuance of a notice, the question of invalidity does not arise on

account of either inappropriate language in the notice or on account of any inappropriate portions of the notice not being struck off. There was no

offence to any of the rules prescribed in as much as the notice is given to secure the assessee's explanation to fulfil the requirement of natural

justice. It is not in dispute that the assessee did not entertain any doubt in his mind when he received the notice issued by the ITO under s. 274. If

the assessee was under a mistaken view about the real intent and effect of the notice issued, he could have asked the ITO to clarify whether the

penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars of such income. In the present case, it is not

denied that in the explanation given to the ITO in response to the notice issued under s. 274, the assessee did not raise any objection on the ground

that the notice did not convey the nature of offence committed by him. No objection was also taken regarding the validity of the notice on that

ground. It is, therefore, clear that the assessee was not under any misapprehension about the offence alleged against him. There was proper

understanding and indeed, in the explanation filed, the assessee dealt with the reasons for contending that no penalty could be levied under s.

271(1)(c). It was not shown to us that any prejudice was caused to the assessee on account of the assessee not being put in the knowledge of the

nature of offence committed by him. The contention regarding the validity of the notice was urged only during the course of the appeal before the

Tribunal and it seems to us that the explanation was only an after-thought. The assessee certainly understood the offence alleged against him and

showed cause to the ITO by pointing of s. 274 would apply not only to concealment of income but also for furnishing inaccurate particulars of such

income and where the offence is two-fold, there is no need on the part of the ITO to strike off any inappropriate portions. In the present case, the

offence alleged against the assessee is that there is concealment of income and furnishing of inaccurate particulars of such income. It is not,

therefore, necessary for the ITO to strike out any portion of the notice issued to him.

9. The principle of natural justice contained in s. 274 which requires that an assessee shall be heard before levying penalty under s. 271 is to ensure

that the basic requirement of fair play in action is fulfilled. The rules of natural justice are flexible and cannot be put on any rigid formula. In order to

sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity, it has to be established that prejudice has

been caused to the party concerned by the procedure followed. We have already mentioned above that the assessee has not shown that any such

prejudice has been caused to him. Attention may be invited in this connection to the decision of the Supreme Court in K.L. Tripathi Vs. State Bank

of India and Others, . We have perused the judgment of the Kerala High Court in N.N. Subramania Iyer Vs. Union of India (UOI) and Another,

on which the assessee has relied. With great respect, we are unable to agree that the mere non-striking off of the inappropriate portions in a notice

renders the notice automatically invalid unless in a further enquiry in the matter it is shown that by reason of the notice not properly conveying the

gist of the offence to the assessee, prejudice is caused to him. We cannot accept as a general proposition of law that in every case a notice is

rendered invalid just because inappropriate portions in the notice are not struck off.

10. For the aforesaid reasons, we uphold the Revenue's plea that the notice issued under s. 274 of the I.T. Act, in the present case, is perfectly

valid and the order of penalty did not suffer from any legal infirmity.

11. The learned counsel for the assessee then contended that before the Tribunal the assessee contended that the explanation that the money-

lending advances were made out of the assessee's winnings from card games was merely disbelieved and no penalty could be levied by merely

disbelieving the explanation offered by the assessee.

12. Our attention has been invited to the following ground No. 5 urged in the grounds of appeal before the Tribunal :

The assessee offered certain explanation. The explanation was rejected by the Income Tax Officer and penalty was levied. The Appellate

Assistant Commissioner sustained it inspite of bringing to the notice the Supreme Court decision on the point.

13. The learned counsel for the Revenue draws our attention to the order of the Tribunal where the Tribunal has considered the question. While the

ITO levied the penalty under s. 271(1)(c), which was upheld by the AAC, the ground urged by the Revenue before the Tribunal was that the

decisions of the Supreme Court governing the levy of penalty under the impugned provisions of s. 271(1)(c) will have no application in a case to

which the provisions of the Explanation to s. 271(1)(c) are applicable. For the first time, the Revenue urged before the Tribunal that this is a case

to which the Explanation could be applied and the penalty levied by the ITO sustained. We find from the Tribunal's order that the assessee took

an objection to the Department being allowed to invoke the Explanation to s. 271(1)(c) for the first time before the Tribunal. The Tribunal referred

to the judgment of the Orissa High Court in Commissioner of Income Tax Vs. K.C. Behera and Others, and held that it was open to the Revenue

to require the Tribunal to consider the question of applying the Explanation to s. 271(1)(c) for the first time. After referring to the Orissa High

Court's judgment, the Tribunal came to the conclusion in the following terms :

In the light of this judgment in Commissioner of Income Tax Vs. K.C. Behera and Others, , I have no hesitation to apply the Explanation to the

facts of the present case and hold that, if so applied, penalty is clearly exigible.

14. Apart from this abrupt conclusion, the order does not disclose that the Tribunal had occasion to consider whether the Explanation to s. 271(1)

(c) is applicable at all. Reference may be made to the decision of this court in Additional Commissioner of Income Tax Vs. Burugupalli China

Krishnamurthy (decd.) and Others, . The assessee explained that the money-lending advances were made from out of his winnings from card

games were not income liable to be taxed. By disbelieving this explanation, the ITO held that the sum of Rs. 8,200 (advances) was income liable to

be taxed under the I.T. Act. It is clear from the order of the Tribunal that the applicability of the Explanation to s. 271(1) was not examined at all

from the point of view of the explanation given by the assessee. There is no finding that even if the explanation given by the assessee is

unacceptable, still penalty can be levied by invoking the Explanation to s. 271(1). The assessee's grievance is that the principles enunciated by the

Supreme Court in a number of decisions in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , The Commissioner of

Income Tax Madras Vs. Khoday Eswarsa and Sons, and also by this court in Commissioner of Income Tax Vs. Koduri Papa Rao, are applicable.

The Tribunal did not examine the matter from the above point view and came to an abrupt conclusion that the Explanation to s. 271(1) is

applicable.

15. The learned counsel for the Revenue relies on the decision of the Patna High Court in Addl. Commissioner of Income Tax Vs. Prasadi Sao

Rajendra Prasad, . According to the learned counsel, the Patna High Court has taken the view that if the explanation offered during the course of

the assessment enquiry is unacceptable and no further explanation is forth-coming during the course of the penalty proceedings, that would

constitute sufficient compliance with the requirements of the Explanation to s. 271(1). We express no opinion on this point as we are requiring the

Tribunal to examine this matter, since it failed to do so in the order already passed, bearing in mind the judgments of this court as well as of High

Courts on this point. We, accordingly, direct the Tribunal to consider this question in proper perspective and determine the question whether the

Explanation to s. 271(1)(c) is applicable while passing an order conformably to the judgment of the court under s. 260(1) of the Act.

16. The learned counsel for the assessee endeavored to support the order of the Tribunal on certain grounds negated by the Tribunal. The learned

counsel stated that the order of penalty, in the present case, was barred by limitation. The learned counsel also contended that there is no sanction

for the levy of penalty for concealment of income deemed under s. 69 of the I.T. Act, 1961. We are not impressed with either of these

contentions. As far as the limitation is concerned, we find that the assessment order was made on March 30, 1972, and the order of penalty was

passed on March 30, 1974. The order was thus passed within two years from the date of the assessment order as per the provisions of law prior

to the Taxation Laws (Amendment) Act, 1970, which came into effect from April 1, 1971. It is not necessary to consider the effect of the

amended provisions because even under the unamended provisions, it is clear that the penalty was levied before the expiry of two years from the

date of the assessment order. As regards the second contention regarding the deemed income, s. 69 enumerates the circumstances in which an

amount can be deemed to be the assessee's income. Once the amount is deemed as income, all the necessary consequences by treating the said

amount as income for the purposes of law would necessarily follow. We find it difficult to accept the learned counsel's contention that the sanction

to levy penalty under s. 271(1)(c) in respect of concealment of income or in respect of furnishing inaccurate particulars of such income, does not

take in its sweep income deemed to be so under any of the provisions of the Act. We therefore, reject these two contentions of the assessee.

17. We decline to answer the question referred to us as the Tribunal failed to deal properly with the question regarding the applicability of the

Explanation to s. 271(1). The Tribunal shall re-hear the appeal in accordance with the directions given by us in para. 13 supra.

18. The reference is answered accordingly. No costs.