

(2001) 06 CAL CK 0002

Calcutta High Court

Case No: IT Ref. No. 5 of 1997 19 June 2001 A.Y 1984-85

Commissioner of Income Tax

APPELLANT

Vs

BIJAY IRON STORES

RESPONDENT

Date of Decision: June 19, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 256(1)

Citation: (2001) 170 CTR 145

Hon'ble Judges: Y.R. Meena, J; Malay Kumar Basu, J

Bench: Full Bench

Advocate: Agarwal, for the Revenue None, for the Assessee, for the Appellant;

Judgement

By the Court

On an application u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred, the following question, set out at pp. 11 and 12 of the paper books, for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that prima facie evidence of non-disclosure of income does not absolve the department from the responsibility of proving mens rea and it is not sufficient to levy penalty u/s 271(1)(c) of the Income Tax Act, 1961 ?"

2. The relevant assessment year is 1984-85. The assessee-firm consists of two partners and it is carrying on business in iron and steel sheets. On 30-3-1984, the search and seizure was carried out in the business and residential premises of the partners and certain books and loose papers had been seized at the time of search. Apart from the papers and other materials, the relevant part of the seized material is 3 loose sheets of papers found at the residence of Sri Satyanarayan Gupta, partner of the assessee-firm. The residence from where papers were seized is shared by one of the partners Sri Satyanarayan Gupta and his son Sri K.L. Kanoi.

Sri Kanoi in his statement had admitted that the profit worked out in the seized papers related to the business of the assessee-firm and he has also admitted that he inscribed these loose sheets.

Though the total income from clandestine business assessed is Rs. 17,27,006. But for the purpose of penalty the amount added on the basis of admission of the son of one of the partners of the assessee-firm is relevant.

The assessing officer has made an addition of Rs. 4,60,980 by treating it as the profit earned by the firm outside the books of accounts. Penalty thereon imposed Rs. 2,11,740 being 200 per cent of the tax evaded. In appeal before the Tribunal, the Tribunal has reduced the addition to Rs. 1,81,876.

In appeal before the Commissioner (Appeals), Commissioner (Appeals) though confirmed the penalty, but directed the assessing officer to recalculate the penalty on the basis of addition of Rs. 1,81,876 sustained by Tribunal.

In appeal before the Tribunal, the Tribunal has cancelled the penalty on the ground that on mere addition in the income during the course of assessment, penalty u/s 271(1)(c) cannot be imposed. Tribunal has placed reliance on the decision of [Girdharilal Soni Vs. Commissioner of Income Tax](#) .

3. None appeared for the assessee. Heard learned counsel for the revenue. Learned counsel for the revenue Mr. Agarwal submits that the decision on which the Tribunal has placed reliance has no application in this case. In that case the assessment year involved was 1968-69 i.e. prior to the amendment in the Explanation to section 271(1)(c) in the year 1975, which has come into force with effect from 1-4-1976. He submits that after that amendment, for the purpose of penalty u/s 271(1)(c), once it is found that there is a concealed income by the assessee, that concealed income shall be deemed to be concealed income for the purpose of penalty u/s 271(1)(c) of the Act. After that amendment in the Explanation when there was addition on the admission of one of the partners or person who keeps the account the addition will be deemed income for the purpose of penalty. The Tribunal has wrongly cancelled the penalty imposed by the assessing officer.

4. While sustaining the penalty by the Commissioner (Appeals) in para 3 of its order, the part of the order of Tribunal in the quantum appeal has been reproduced. For ready reference that read as under :

"Copies of the three sheets which contended the trial balance and the profit and loss account have been filed and it is correct that there is a regular profit and loss account giving the credit side of the account at Rs. 7,643 whereas the debit side of the profit and loss account was at Rs. 5,83,552. The profit being the difference of the two was calculated at Rs. 1,81,876 but no basis is available for the profit of Rs. 94,043 which has been added to the said profit. Sri K.L. Kanoi was the author and he was never been questioned. Moreover, these papers were seized from the residence

of Sri K.L. Kanoi and Sri Satya Narayan Gupta, and, therefore, it can be presumed that the profit of Rs. 94,043 related to Sri K.L. Kanoi. Under the said circumstances the addition maintained by the Commissioner (Appeals) is restricted to Rs. 1, 81,876."

In para 8 while concluding the order Tribunal has referred the decision of this court in the case of Giridhari Lal Soni (supra) and cancelled the penalty sustained by the Commissioner (Appeals).

5. We have noticed that Tribunal has simply followed the decision of this court in Giridhari Lal Soni v. CIT (supra) but Tribunal has ignored the amendment made in Explanation to section 271(1)(c) which came into effect from 1-4-1976. In the case of Giridhari Lal Soni the assessment order involved was 1968-69. Therefore, the Explanation, which was amended in 1975 and that amendment made effective from 1-4-1976, has no application prior to assessment years 1976-77. In the case in hand the assessment year is 1984-85. Therefore, whether there is a case of penalty or not, we have to consider the case in the light of the amendment made in 1975.

6. Mr. Agarwal, learned counsel for the revenue further brought to our notice that the amendment made in the Explanation to section 271(1)(c) has been considered by the Kerala High Court in the case of [Commissioner of Income Tax Vs. A. Sreenivasa Pai](#), after giving the legislative history of section 271(1)(c) the court has considered the effect of amendment in Explanation to section 271 (1) (c). The relevant part of the Explanation reads as under :

"Explanation : 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 assessing officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him.

then, the amount added or disallowed in computing the total income of such person as a result thereof shall,

for the purpose of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."

Part of the Explanation referred above inserted by Taxation Laws (Amendment) Act, 1975 and the amendment has prospective effect and not retrospective effect. After this amendment whether there is a case of penalty or not, that has to be considered in the light of the amended Explanation. After this Explanation if the assessing officer or the first appellate authority is satisfied that (a) any person has concealed

the particulars of his income, or (b) has furnished inaccurate particulars of such income, the penalty u/s 271(1)(c) should be imposed.

7. The expression has concealed and has furnished inaccurate particulars have not been defined anywhere else in the Act but that makes no difference. The word "conceal" is derived from the Latin word "concelare" which implies "to hide". In Websters New International Dictionary, the word has been equated "to hide or withdraw from observation; to cover or keep from sight., to prevent discovery of; to withhold knowledge of".

Once the assessing officer is satisfied and found that assessee has offered no explanation or offered any explanation which is not substantiated by the assessee that represents the concealed income and in that case that income should be deemed to have been concealed by the assessee for the purpose of section 271(1)(c) of the Act. The basis of addition of income is some papers found at the time of search. The author of those papers, a son of one of the partners has admitted in the statement before the Income Tax Officer that he had prepared those papers, which are seized, and those papers are related to the business of the assessee-firm.

On these facts and circumstances the addition has been made on account of the concealed income that has been finally sustained by the Tribunal, the final addition is of Rs. 1,81,876 was sustained on account of the concealed income, when there was evidence for such concealed income and admission by the author of the papers the addition has been sustained by Tribunal. That addition has not been challenged by assessee. In these circumstances this is the fit case for penalty.

8. What other evidence are required, we do not understand, especially after amendment in the Explanation to section 271(1)(c) which has come with effect from 1-4-1976. We do not find any reason for cancelling the penalty imposed by the assessing officer and sustained by the Commissioner (Appeals). The Tribunal has wrongly relied on the decision of this court in case of Giridhari Lal Soni (supra), which has no application after amendment in the Explanation to section 271(1)(c).

In the result, we answer the question in negative, that is, in favour of the revenue and against the assessee.