

(1988) 06 CAL CK 0018

Calcutta High Court

Case No: Income-tax Reference No. 37 of 1978

COMMISSIONER OF Income Tax

APPELLANT

Vs

BENGAL JUTE MILLS CO. LTD.

RESPONDENT

Date of Decision: June 13, 1988

Citation: (1988) 72 CTR 177 : (1988) 174 ITR 402 : (1988) 41 TAXMAN 122

Hon'ble Judges: Ajit K. Sengupta, J; Ajit K. Sen Gupta, J

Bench: Division Bench

Judgement

AJIT K. SENGUPTA J. - At the instance of the Commissioner of Income Tax, the following questions of law have been referred to this court u/s 256(2) of the Income Tax Act, 1961, for the assessment year 1974-75 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the penalty order passed by the Inspecting Assistant Commissioner cannot be sustained on the sole ground that the Tribunal has deleted the addition of Rs. 4 lakhs made by the Income Tax Officer in the quantum appeal, which order has not been accepted by the Department ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in cancelling the order of penalty passed by the Inspecting Assistant Commissioner u/s 271(1)(c) of the Income Tax Act, 1961 ?"

The facts, shortly, are that the assessee was carrying on the business of purchasing raw jute from East Pakistan and manufacturing and selling of jute goods, and it had purchased jute worth Rs. 4 lakhs from Madaripur Trading Co. Ltd. which, in its turn, had purchased the same from M/s. Sarsabari Jute Trading Co. Ltd. Firstly, Madaripur Trading Co. Ltd. paid Rs. 4 lakhs to Sarsabari Jute Trading Co. Ltd. and then the assessee reimbursed Madaripur Trading Co. Ltd. on October 30, 1950, in the following manner :

"Rs. 4 lakhs were sent to one Shri Shaligram Chowdhury of Bombay by telegraphic transfer on October 30, 1950 through Hindusthan Mercantile Bank. The said Shaligram Chowdhury, in his turn, paid over Rs. 4 lakhs to G. Yafi & Sons of Bombay which, in turn, paid the said amount to Madaripur Trading Co. Ltd. in cash."

According to the Income Tax Officer, as the payment of Rs. 4 lakhs in cash to Madaripur Trading Co. Ltd. was recorded on October 31, 1950, in the books of account of the assessee, while the telegraphic transfer of Rs. 4 lakhs to Shaligram Chowdhury was sent on October 30, 1950, there were two transactions of Rs. 4 lakhs each and as the transaction regarding remittance of money to Shaligram Chowdhury was not recorded in the assessee's books of account, the same had escaped assessment, when the assessment was originally framed on January 31, 1956. The Income Tax Officer, therefore, reopened the assessment u/s 147(a) of the Act, with a view to include Rs. 4 lakhs which was remitted to Shaligram Chowdhury, in the total income of the assessee. For the reasons stated in his assessment order dated September 25, 1969, the Income Tax Officer rejected the assessee's explanation regarding the mode of payment of Rs. 4 lakhs to Madaripur Trading Co. Ltd. and, accordingly, he treated Rs. 4 lakhs as the assessee's income from undisclosed sources. Simultaneously, he initiated proceedings u/s 271(1)(c) of the Act and referred the matter to the Inspecting Assistant Commissioner as the minimum penalty imposable under that section exceeded Rs. 1,000. Thereafter, the Inspecting Assistant Commissioner, vide his order dated September 23, 1971, imposed penalty of Rs. 4,50,000 u/s 271(1)(c) of the Act. Against the addition of Rs. 4 lakhs to the total income of the assessee, the assessee had preferred an appeal before the Appellate Assistant Commissioner who confirmed the action of the Income Tax Officer, vide his order dated June 25, 1974.

Being aggrieved by the orders of the Inspecting Assistant Commissioner as well as the Appellate Assistant Commissioner, the assessee preferred appeals before the Tribunal. The Tribunal, in its order dated December 13, 1974, in the quantum appeal, came to the conclusion that there was, in fact, only one transaction of Rs. 4 lakhs on October 30, 1950, which was accounted for by the assessee in its books of account and not two transactions as alleged by the Revenue. The Tribunal, therefore, deleted the addition of Rs. 4 lakhs made by the Income Tax Officer as the assessee's income from undisclosed sources.

As the Inspecting Assistant Commissioner had imposed a penalty of Rs. 4,50,000 u/s 271(1)(c) only on the basis of the addition of Rs. 4 lakhs made by the Income Tax Officer and since the Tribunal had deleted the said addition in its aforesaid order, the Tribunal was of the view that the penalty imposed u/s 271(1)(C) of the Act cannot be sustained. It, therefore, cancelled the penalty imposed u/s 271(1)(c) of the Act.

Mr. Moitra, appearing for the applicant, could not state whether any reference was made against the decision of the Tribunal deleting the addition of Rs. 4,00,000 made by the Income Tax Officer. As would be evident from the facts that the penalty was

imposed solely on the basis of the said addition, if the said addition is deleted, the charge of concealment cannot be sustained. The Tribunal held that there was in fact only one transaction of Rs. 4 lakhs on October 30, 1950, which was accounted for by the assessee in its books of account and not two transactions as alleged by the Revenue. Those findings have not been challenged. In our view, the Tribunal was right in cancelling the order of penalty passed u/s 271 (1) (c) of the Income Tax Act.

In the premises, both the questions referred to this court are answered in favour of the assessee and against the Revenue.

There will be no order as to costs.