

(2005) 05 DEL CK 0263

Delhi High Court

Case No: IT Appeal No. 153 of 2003

Kamal Chand Jain

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision: May 5, 2005

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 260A, 271, 271(1)

Citation: (2005) 196 CTR 541 : (2005) 277 ITR 429

Hon'ble Judges: Swatanter Kumar, J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Balram Sanghal, for the Appellant; R.D. Jolly and Ajay Jha, for the Respondent

Judgement

Swatanter Kumar, J.

The facts giving rise to the present appeal u/s 260A of the IT Act (hereinafter referred to as "the Act") are that Sh. Kamal Chand Jain, assessed, filed the return for the asst. yr. 1991-92 on 4th Oct., 1991, declaring the net income of Rs. 1,00,880. Subsequently, the case was taken up for scrutiny u/s 143(3) with the approval of the competent authority. Notices were issued to the assessed and after providing opportunity to the assessed, the AO made an addition of Rs. 3,77,950 in terms of the surrender made by the assessed vide his letter dt. 18th Oct., 1993. The penalty proceedings u/s 271(1)(c) of the Act were initiated by the same order, though separately. Vide his order dt. 21st Nov., 1995, the CIT(A) partly allowed the appeal of the assessed. However, in regard to the initiation of penalty proceedings on the surrender of the income of Rs. 3,77,950, it was held that the appeal was premature as no penalty had been imposed by that time. Subsequently, the order of penalty was passed against which the assessed again preferred an appeal, which was allowed by the CIT(A) vide his order dt. 31st Dec., 1996, in which it was held as under :

"In the instant case, the appellant has surrendered certain amount for taxation just to buy peace and avoid further litigation. Following the ratio laid down by the Hon"ble Supreme Court in the case of Shadilal Sugar (supra), no penalty u/s 271(1)(c) is imposable on the amount surrendered for taxation. I have also verified the facts whether such surrender was made after the concealed income was detected by the Department. I notice that surrender was made during the course of assessment proceedings and, Therefore, it could not be said that the Department has detected any concealment. Thus, the surrender made by the appellant has to be treated voluntarily. Needless to say that if income has been surrendered voluntarily, no penalty u/s 271(1)(c) is imposable. I, Therefore, hold that the AO was not justified in imposing the penalty on the surrendered amount.

The decision of Hon"ble Supreme Court in the case of Shadilal Sugar (supra) was given after the amendment to Section 271(1)(c) where the word "deliberately" was omitted, though in the assessment year before Hon"ble Supreme Court the word "deliberately" was on the statute. In this connection, I have perused the decision of the Andhra Pradesh High Court in the case of [Additional Commissioner of Income Tax Vs. Burugupalli China Krishnamurthy \(decd.\) and Others](#), . The Hon"ble High Court dealing with this issue held as under :

"Even if the omission of the word "deliberately" by the Finance Act of 1964, the legal position that is, applicable to penalty proceedings as enunciated by the Supreme Court in [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali](#), and [The Commissioner of Income Tax Madras Vs. Khoday Eswarsa and Sons](#), does not materially alter."

As regards imposition of penalty on the trading addition made by the AO and sustained by CIT(A), I have perused the observations of learned counsel that the addition may be good for the purposes of taxation as the appellant has not substantiated its Explanation. But the appellant had filed his Explanation on the trading addition which was rejected by the AO/CIT(A). But such Explanation filed by the appellant was bona fide. Needless to say that penalty u/s 271(1)(c) was not imposable where the Explanation furnished by the appellant was bona fide. My views find support from various decisions including the decisions reported in CIT v. Gajanand Shyamlal (1978) 111 ITR 816 , 146 ITR 204 (Cal) (sic) and [Commissioner of Income Tax Vs. Nipani Tobacco Stores](#), . Respectfully Mowing the ratio laid down by the Hon"ble Courts mentioned above, I hold that the AO was not justified in imposing the penalty based on the trading addition also. Thus, the penalty imposed by the AO is cancelled.

In the result, the appeal is allowed."

2. The Department preferred an appeal against the order of the first appellate authority which was dismissed (sic) by the Tribunal vide its order dt. 15th July, 2002. The Tribunal while accepting the appeal of the Department and setting aside the

order of the first appellate authority held as under :

"We find that the law as it stands goes against the arguments advanced by the learned counsel for the assessed. The Delhi High Court and the Supreme Court have held that penalty u/s 271(1)(c) is clearly livable after the insertion of the Explanation to Section 271(1)(c) and the onus was clearly on the assessed to rebut the claim that the assessed had concealed the particulars of his income which he has failed to do. The assessed's claim that he had made the surrender to buy peace with the IT Department would also not prevent levy of penalty for concealment of income as there can be no agreement or estoppel against the statute. We also find that the CIT(A) had considered the claim of the assessed regarding the draft penalty order imposed by the AO. Therefore, the assessed's claim that it was not considered at the appellate stage is incorrect. The order passed by the AO is valid and within the time-limit prescribed u/s 271(1)(c) for imposition of penalty. We set aside the order of CIT(A) and restore the penalty imposed by the AO.

In the result, the appeal of the Department is allowed."

3. It was contended that no question of law arises from the order of the Tribunal and as such the appeal of the assessed should be dismissed. However, reference in this regard can be made to the judgment of the Supreme Court in the case of [Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd.](#), wherein it was held that where the Tribunal fails to deal with a question of law raised before it, it must be deemed to have been dealt with by it and is, Therefore, one arising out of its order. Thus, we find no merit in the contention raised before us by the Revenue.

4. Vide letter dt. 18th Oct., 1993, the assessed had surrendered the amount to buy peace and avoid further litigation. While relying upon the judgment of the Supreme Court in the case of [Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi](#), the CIT had formed an opinion that it was not a case for imposition of penalty under the provisions of Section 271(1)(c) of the Act. This finding arrived at by the first appellate authority was also based upon a finding of fact arrived at by the authority on the premises that surrender was made during the course of assessment proceedings and was not a direct consequence of detection of concealment by the Department. It was held to be a voluntary surrender. Even the Explanation given by the assessed was found to be bona fide. The above conclusions of the CIT were disturbed by the Tribunal as already noticed. According to the Tribunal, it was a case of deemed concealment and even the Explanation made by the assessed was not bona fide and it was the result of Department's detection that this amount could be made taxable. For this purpose, the reliance was placed on the judgment of this Court in the case of [Electrical Agencies Corporation Vs. Commissioner of Income Tax](#), and the judgment of the Supreme Court in the case of [M/s. K.P. Madhusudhanan Vs. Commissioner of Income Tax, Cochin](#).

5. Reference to the order of the AO, at this stage, would be appropriate. It has been noticed by the ITO that the assessed was not able to offer any satisfactory Explanation for the sum of Rs. 11,99,242.54 in regard to its source. On 11th Oct., 1993, a specific order was passed requiring the assessed to explain the source and also to furnish the balance sheet for the immediately preceding year. The assessed failed to do either, but then on the hearing of 18th Oct., 1993, he submitted a letter stating that he was not aware of his tax affairs. Unable to get any proper Explanation from the assessed, the ITO added the said amount of Rs. 3,77,950 and specifically recorded his opinion in that regard which reads as under :

"...therefore, he offered the same for taxation by surrendering it only when tax AO confronted him. Needless to mention here that the assessed had concealed/furnished inaccurate particulars of his income to the extent of the amount in question as well as in respect of the trading addition."

6. We are concerned with the asst. yr. 1991-92. The Explanation to the provisions of Section 271 of the Act was in force at the relevant time. Explanation 1 to this section was made effective from 1st April, 1976. Under the Explanation where an Explanation offered by the assessed is found by the AO, or even the CIT(A) to be false or that the Explanation was bona fide and fails to substantiate such Explanation, then the amount added or disallowed in computing the total income of such person as a result thereof would deem to represent the income in respect of which particulars have been concealed. In other words, there is a deemed addition in the event the concerned authorities record their satisfaction that there is no proper and plausible Explanation offered by the assessed or he has failed to substantiate such Explanation. Obviously, the law places an obligation upon the assessed to substantially support his Explanation in all reasonable manners.

7. It is settled law that the Tribunal is a final authority in relation to facts and normally this Court while examining the matter within the purview and scope of Section 260A of the Act, would not interfere with the findings of fact recorded by the authorities. In the present case, the AO had recorded a finding which has been affirmed by the Tribunal, while upsetting the findings recorded by the CIT(A). Thus, in our view, no question of law, much less a substantial question of law arises in the present appeal for our consideration.

8. The appeal is thus dismissed, while leaving the parties to bear their own costs.