

(1984) 03 RAJ CK 0006
In the Rajasthan High Court
Case No : IT Reference No. 28 of 1975

Additional Commissioner of Income Tax	APPELLANT
Vs	
Mohammed and Sons	RESPONDENT

Date of Decision : 07-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 255(4), 256(2), 27
Partnership Act, 1932 — Section 19, 19(1), 22, 25
Representation of the People Act, 1951 — Section 85

Citation : (1985) 22 TAXMAN 492

Hon'ble Judges : S.K. Mal Lodha, J; K.S. Lodha, J

Bench : Division Bench

Advocate : B.R. Joshi, for the Appellant; S.K. Kackar, for the Respondent

Judgement

S.K. Mal Lodha, J.—This Court by its order dated 21-11-1974 directed the Tribunal, Jaipur Bench, Jaipur to draw up the statement of the case and to refer the following question of law arising out of its order dated 13-3-1972: Whether, on the facts and in the circumstances of the case, the Appellate Tribunal could take the view that there was dispute or non-co-operation amongst the partners of the assessee of the nature stated in its reply to the notice u/s 27 4(1) of the income tax Act, 1961, and it constituted "reasonable cause" for the failure to furnish the return of income tax within the meaning of section 271(1)(a) of the Act?

The assessee is a registered firm. In this reference we are concerned with the assessment year 1962-63. The assessee was required to file the return in respect of the assessment year 1962-63 by 31-8-1962. An application in Form No. 6 for extension of two months' time for filing the return was submitted on 31-8-1962 and extension was sought on the ground that the accounts of the assessee were under audit. The ITO granted two months' time for filing the return. The return was not filed until the expiry of the time granted to the assessee. The return was filed on 24-2-1965. As there was default in filing the return within the extended

time, the ITO u/s 271(1)(a), read with section 274 of the income tax Act, 1961 ("the Act"), initiated penalty proceedings. In pursuance of the notice, written reply dated 23-2-1967 was filed. It was stated, inter alia, in the reply that the return of the firm (assessee) could not be filed on account of dispute amongst the partners; as some partners did not co-operate in submitting the full particulars regarding the transactions done through them and this constituted "reasonable cause" for not filing the return in time. The ITO was not satisfied with the explanation given by the assessee and came to the conclusion that there was no reasonable cause which prevented the assessee from filing the return in time. He, therefore, by his order dated 20-3-1967 imposed a penalty of Rs. 16,412 u/s 271(1)(a). The assessee filed an appeal. Before the AAC, five letters were filed. There are five letters dated 12-10-1962, 5-12-1962, 4-12-1963, 23-4-1965 and 19-12-1963. These letters as Annexures C-1 to C-5 have been made part of the statement of the case. The AAC by his order dated 20-3-1969, dismissed the appeal holding that there was no reasonable excuse which prevented the assessee from filing the return in time u/s 139(1) of the Act. A further appeal was taken before the Tribunal. The Accountant Member held that prior to 2-6-1964, there were reasonable causes which prevented the assessee from filing the return in time and that beyond 2-6-1964, there was no reasonable cause for not filing the return in time. The Judicial Member, however, did not agree with the Accountant Member insofar as the latter held that there were reasonable causes for not filing the return prior to 2-6-1964. He was further of the opinion that there was no reasonable cause for not filing the return prior to 2-6-1964. On account of the difference of opinion between the Accountant Member and the Judicial Member the matter was referred to a Third Member. The question was formulated and referred to the President of the Tribunal u/s 255(4) of the Act. That question was assigned by the President of the Tribunal to the Judicial Member of Delhi Bench. The Third Member answered the question referred in the negative and expressed his agreement with the findings reached by the learned Accountant Member. The Tribunal on the basis of the opinion of the Third Member by its order dated 13-3-1972 decided the appeal and it was held that there were reasonable causes in filing the return for the period from 31-10-1962 to 2-6-1964 (inclusive of the extended period of two months) and that after 2-6-1964, till 24-2-1965, there was no reasonable cause which prevented the assessee from filing the return. The assessee submitted an application u/s 256(2) and this Court, as stated above, while allowing the application, required the Tribunal to state the case on the question stated hereinabove and to refer it to this Court for decision.

2. We have heard the learned counsel for the revenue as well as Shri S.K. Kackar appearing for the assessee.

3. In the written reply to the notice, the assessee has, inter alia, stated that the return of the assessee-firm could not be filed because of the dispute amongst the partners as some partners did not co-operate in submitting the full particulars regarding the transactions done through them. The ITO in his order Annexure- B

dated 20-3-1967 has stated that no evidence was produced before him in support of the fact that it was on account of the dispute amongst the partners as some partners did not co-operate in submitting the full particulars regarding the transactions done through them. The ITO took into consideration (the fact) that the assessee was carrying on its business regularly and as such it can safely be presumed that regular accounts must have been maintained. To quote from the order of the ITO :

The assessee is maintaining regular books of account and the return has been filed as late as on 25-2-1965. Since the business was carried on regularly, it is presumed that regular account books must have been maintained and there is no reason for not filing the return within the time allowed u/s 139(1) of the income tax Act, 1961.

4. The ITO was also influenced by the fact that the assessee had not applied for extension of time after the expiry of two months. The assessee filed appeal and also submitted five letters for the purpose of showing that there was reasonable cause for not filing the return in time. The AAC held that the assessee's failure to file its return of income in time as required u/s 139(1) was without reasonable cause and he, therefore, upheld the penalty imposed by the ITO which is the minimum penalty imposable under the Act. In the second appeal before the Tribunal, the Accountant Member while dealing with existence of reasonable cause for the failure of the assessee to file the return in time held, after noticing the letters filed by the assessee, that considering the state of affairs brought out by the correspondence which passed between the Associated Cement Companies Ltd. on the one hand and the assessee-firm on the other, it could not be said that there was absence of reasonable cause on the part of the assessee for its failure to complete the accounts and to prepare the returns of income for the various years inclusive of the assessment year 1962-63. The Judicial Member, while disagreeing with the view taken by the Accountant Member, was of the opinion that the assessee cannot absolve itself from the mere circumstances that the accounts were not complete, for, their completion was its responsibility. He has stated in his order dated 24-9-1971 as under :

After all, the business was continued to be carried on and the assessee continued to make income. It could not be, therefore, the filing of the return alone those quarrels assumed such domineering position as to absolve them from the requirements of law (sic).

It was further stated by him as follows :

Moreover, the present are the cases of the assessment of a firm. Such firm acts through its partners. If those partners are negligent or do undesirable acts of internecine quarrels, they must face the resultant consequences.

5. On a reference of the question to the Third Member, he was of the view that there is evidence to show that on account of disputes between the partners of the assessee-firm, there was serious dislocation both as regards the business

and as to its accounts and that it is clear from the evidence, that the returns could not be filed within the time allowed to the assessee as the accounts were not completed on account of disputes between the partners. He, therefore, agreed with the conclusion recorded by the Accountant Member.

6. The question that arises is whether on the averments made by the assessee to show that his failure to file the return in respect of the assessment year 1962-63, an inference of reasonable cause as envisaged by section 271(1)(a) can be drawn ? Here, it will be useful to examine as to what constitutes "reasonable cause". While dealing with the word "reasonable" in Stroud's Judicial Dictionary, Fourth edn. at pp. 2258-2259 it is stated as under;

The word "reasonable" has in law the prima facie meaning of "reasonable" in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know.

7. The learned counsel for the assessee, how ever, invited our attention to *Dinabandhu Sahu v. Jadumoni Mangaraj* AIR 1954 SC 411, where their Lordships while dealing with section 85, proviso, of the Representation of the People Act, 1951, and section 5 of the Limitation Act, 1908, observed that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the party. In the facts and circumstances of that case, it was held that the order condoning delay was on the facts a proper one to pass under the proviso to section 85 of that Act.

8. "Sufficient cause" and "reasonable cause" connote virtually the same shade of meaning. There is no substantial difference between "sufficient cause" and "reasonable cause". Before a cause can be said to be reasonable or not it must be found as a fact that a particular cause operated upon the mind of the assessee which prevented him from filing the return in time. The onus is on the assessee to show that he was prevented by sufficient cause from complying with the statutory requirement of filing return in time and it was for the ITO to be satisfied that the cause shown is a reasonable cause.

9. It may be stated at once that the letters dated 12-10-1962, 5-12-1962, 4-12-1963, 23-4-1965 and 19-12-1963, which were produced by the assessee before the AAC to show that there was dispute going on between the partners on account of which, the accounts of the assessee-firm could not be finalised in time, there was reasonable cause and, therefore, the return could not be filed in time as required by the provisions of section 139(1). A persual of the letter (C-1) dated 12-10-1962 shows that it was sent by Shri M.M. Singhvi, Advocate, to Shri Inayatullah, who is one of the partners of the assessee-firm. It purported to be a notice to Inayatullah for rendering accounts of the firm. The second letter (C-2) dated 5-12-1962 was sent by the Associated Cement Companies Ltd. to the assessee in which a reference was made to the dispute between the partners with regard to the working of the firm. The third letter (C-3) dated 4-12-1963

was also sent by the Associated Cement Companies Ltd. to Shri Abdul Aziz, one of the partners of the assessee-firm, in which it was stated that the accounts from Badwasi were not being regularly submitted to the head office of the company by the partner in charge of operations at Badwasi. The fourth letter (C-4) dated 23-4-1965 is also from the aforesaid company which was sent to the assessee mentioning that in view of the continuing disputes between the partners of the firm, the company could not place any further reliance on the ability of the assessee-firm to carry out the company's work at Badwasi. The fifth letter (C-5) dated 19-12-1963 was from the same company to the assessee in which the working arrangement with regard to the management of the affairs of the firm by various partners was evolved. It is pertinent to mention that in these letters, there is no reference to any dispute amongst the partners of the assessee-firm regarding account and affairs for the accounting year relevant to the assessment year 1962-63. It is also significant to note that the assessee submitted an application to the ITO for extension of time for filing the return stating that the accounts were under audit. It would not be reasonable to infer from that application that at the time of the submission of the application for extension of time, there was no dispute amongst the partners for the accounting year relevant to the assessment year 1962-63, and also for the reason that had the accounts been not complete, there was no occasion for sending them to the audit. Under the Act, the firm and its partners are separate entities. Section 19 of the Indian Partnership Act, 1932, deals with implied authority of partner as agent of the firm. According to section 19, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. It is, however, subject to the provisions of section 22 of the Indian Partnership Act. u/s 19(1), the authority of the partner to bind the firm is called as "implied authority". Reference may also be made to section 25 of the Indian Partnership Act, which says that every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner. The question relating to the dispute going on amongst the partners which prevented or did not enable the assessee to complete the accounts as alleged by it, has to be examined in the light of the aforesaid two provisions, namely, sections 19 and 25. The individual acts of the partners pertaining to the dispute and for that matter, their non-co-operation which according to the assessee resulted in not completing the accounts were the acts relating to the assessee-firm which has its separate existence as entity in the Act. The completion of the accounts in respect of the assessment year 1962-63 was the joint and several responsibility of the assessee-firm for, the assessee-firm was required to file return for the assessment year 1962-63 by 31-8-1962 or within the extended time allowed by the ITO. The assessee was under an obligation to complete the accounts relating to the assessment year 1962-63 in time and if it did not, on account of the disputes of its partners inter se, it would be reasonable to infer that they did not act diligently in completing the accounts. It is not the case of the assessee-firm that on account of the dispute amongst the partners, the business of the firm was not continuing or that there was no income of the firm. u/s 139(1) the

assessee, who has a taxable income is under an obligation to file the return in time provided under it, unless the ITO in his discretion extends the date for furnishing the return. In section 271(1)(a) the words used are "without reasonable cause" failed to furnish the return of total income which he was required to furnish under sub-section (1) of section 139". The Tribunal did not take this fact into consideration that the return which was filed by the assessee contained a note to the effect that it was a duplicate return as the original return had been filed on 29-12-1962. This shows that the assessee has taken an inconsistent stand. It is clear that the assessee did not furnish the return though it was obligatory on it to do so u/s 139(1). The case relates to the assessee of a firm. Its business was continuing and the assessment was made. Apart from that, for the assessment year 1962-63 when the application was submitted to the ITO for extension of time, the facts relating to the dispute between the partners and (the fact that) it was because of the non-co-operation of the partners of the assessee, the return could not be filed were not stated. The letters which were duly considered by the AAC have no bearing for determining the question of reasonable cause u/s 271(1)(a) relating to the assessment year 1962-63. The cumulative effect of all this is that it cannot be said that the assessee had failed to furnish the return of the income in respect of the assessment year 1962-63 without reasonable cause. We, therefore, answer the question referred to us in the negative, i.e., in favour of the revenue and against the assessee. Let the answer be returned to the Tribunal. In the facts and circumstances of this case, the partners shall bear their own costs.