
(1975) 09 AP CK 0010

In the Andhra Pradesh High Court

Case No : Income-tax Case No. 189 of 1974

Additional Commissioner of Income Tax

APPELLANT

Vs

Sawan Motor Stores

RESPONDENT

Date of Decision : 08-09-1975

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1977) 109 ITR 660

Hon'ble Judges : Sambasiva Rao, Acting C.J.;Chennakesav Reddy, J

Bench : Division Bench

Advocate : P. Rama Rao, Addl. Commissioner, for the Appellant; A. Lakshminarayana, for the Respondent

Judgement

Sambasiva Rao, Actg. C.J.

1. This Income Tax case is brought by the Additional Commissioner of Income Tax, Andhra Pradesh, Hyderabad, u/s 256(2) of the Income Tax Act, 1961, for calling upon the Tribunal to refer the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal's decision in cancelling the penalty u/s 271(1)(c) of Rs. 10,000 imposed by the Inspecting Assistant Commissioner is sound in law ?"

2. The appeal before the Tribunal was in respect of levy of penalty u/s 271(1)(c). The penalty came to be imposed on the assessee in the following circumstances : In the assessment proceedings the Income Tax Officer found two cash credits of Rs. 5,000 and Rs. 10,000. The assessing officer believed the first one and disbelieved the other. According to the assessee, he had received Rs. 10,000 from his father in 1947 in the form of gold and also received provident fund money of Rs. 8,000 on the father's retirement in 1969. So, according to him, the entire amount of Rs 15 000 was available with the father to lend the same to him. The assessing officer did not accept this explanation and so added Rs. 10,000 as income from undisclosed sources. Thereafter, he initiated proceedings

for levy of penalty u/s 271 and referred the matter to the Inspecting Assistant Commissioner. The Assistant Commissioner came to the conclusion that the assessee had concealed his income or furnished inaccurate particulars of income and accordingly levied a penalty of Rs. 10,000.

3. When the matter was carried in appeal, the Tribunal held that, apart from the fact that the explanation of the assessee had not been accepted there was no other evidence for the revenue placed before the Tribunal to establish that the sum of Rs. 10,000 was concealed income of the assessee for the year in question, i.e., 1968-69. The Tribunal also held that Clause (c) of Section 271(1) has no application on the ground of furnishing inaccurate particulars of income, since the Inspecting Assistant Commissioner had failed to show what the inaccurate particulars were. Consequently, the Tribunal concluded that none of the grounds on which the Inspecting Assistant Commissioner had imposed penalty could be substantiated and in that view cancelled the penalty. When an application was made to it u/s 271(1), the Tribunal declined to formulate the question and send it for this court's opinion. Hence this case.

4. Sri P. Rama Rao, learned counsel for the revenue, argues that it is for the assessee to substantiate the explanation he had given for showing the cash credit. His explanation had been disbelieved during the assessment proceedings. So, there was no further burden on the revenue to show that the sum of Rs. 10,000 was concealed income of the assessee for the year. Nor was there any onus on the department to establish that the assessee had given inaccurate particulars of income. The very fact that his explanation had been disbelieved by the assessing authority is sufficient proof of the assessee furnishing inaccurate particulars. In other words, Sri Rama Rao's contention comes to this. Once the assessing officer disbelieves the explanation offered by the assessee in regard to the cash credit, the revenue need not show anything further in the way of establishing that the assessee had concealed income or had furnished inaccurate particulars than pointing out that this explanation had been disbelieved by the assessing authority.

5. This line of argument cannot be accepted as it is contrary to not only the plain language of Section 271(1)(c) but also to the decided cases of the Supreme Court and this court on the point. In view of the rulings of the Supreme Court and this court, it is not necessary to go elaborately into the question. What Section 271(1) says is that if the Income Tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under the Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay, by way of penalty, that amount as mentioned in Sub-clause (iii). We may here take note of the fact that the word "deliberately" was omitted from Section 271(1)(c) by Act V of 1964. Earlier, that clause read as follows: "has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income". By the same amendment Act, an Explanation is added to Sub-section (1) of Section

271. But, for our purpose it is not necessary to examine the scope of the Explanation, because even according to the revenue, the Explanation has no application to the present case.

6. New, the question is whether the revenue can sit tight on the non-acceptance of the explanation that had been tendered by the assessee during the course of the assessment proceedings and impose a penalty u/s 271(1)(c). The Supreme Court in *Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal*, and *Aluminium Corporation of India Ltd. Vs. Commissioner of Income Tax, West Bengal*, has rejected this contention. Following the two decisions it was held by a Division Bench of this court consisting of Obul Reddi C.J. and Punnayya J. in *Additional Commissioner of Income Tax Vs. Narayanadas Ramkishan*, that establishment of mens rea is an essential ingredient of a criminal offence. Though any statute can exclude the establishment of mens rea by a specific provision, it is a good rule of construction that a provision which creates an offence should be construed in conformity with common law provisions rather than against it. Mens rea, by necessary implication, may also be excluded when it is absolutely clear that the provisions of the Act would be defeated by such insistence to prove it. Penalty proceedings being criminal or quasi-criminal, establishment of mens rea is an essential ingredient and as such the statutory obligation is on the revenue to prove that the assessee had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of his obligation. It was also further held by the Division Bench in the same case that it is not open to the department to arbitrarily levy penalty. Before imposing penalty, the authorities must be reasonably satisfied, on the material placed before them, that the assessee failed to show reasonable cause for the late filing of return. The words " without reasonable cause " in Section 271(1)(a) vis-a-vis 271(1)(c), where they are not found, do not shift the burden of proof from the department to the assessee. Levy of penalty is a matter of discretion which must be exercised by the authorities judiciously on consideration of relevant circumstances. Penalty should not be imposed merely because it is lawful to do so. If the offence is of a technical or venial nature, the authorities will be justified in refusing to levy penalty. This clear enunciation of law on the lines laid down by the Supreme Court in the aforesaid two decisions fully answers the contention of Sri Rama Rao on behalf of the department.

7. At the same time, we must refer to two Bench decisions of this court relied on by the learned standing counsel for the revenue. The first of them is *Commissioner of Income Tax Vs. Anantharam Veerasingaiah and Co.*, . We do not think that *Chinnappa Reddy and A. D. V. Reddy JJ.* laid down any proposition different from the view expressed by the Supreme Court in the two decisions referred to above. They pointed out that the quantum of evidence to establish that an unexplained cash credit is an income receipt must vary from case to case depending on the facts and circumstances of the particular case. The entirety of the circumstances must be taken into consideration in arriving at a conclusion and not the mere existence of cash deposits in the current year or intangible

additions in the previous years. In proceedings for the levy of penalty, the false explanation of an assessee may legitimately lead to the conclusion that an item represents concealed income if, for example, there is no other possible explanation from the record, or if there are other similar unexplained cash credits suggesting the existence of a pattern or design, or if the books of the assessee are found to be thoroughly unreliable, or if the income returned by the assessee shows that he was regularly indulging in suppressing income, or some such other circumstances. Having enunciated the legal position thus, the learned judges referred to the totality of the circumstances in the case before them and they also referred to the pattern or design that was followed by the assessee in bringing the income receipts into the books in the guise of cash credits and there were further unexplained items of cash credits. It was also found that the books of the assessee were wholly unreliable. Thus, taking the entirety of the circumstances into consideration, the learned judges drew the inference that the cash credits and the cash deposits represented concealed income. As the learned judges themselves pointed out, each case will have to be appreciated in the light of its own facts. This decision in Commissioner of Income Tax Vs. Anantharam Veerasingaiah and Co., will have to be understood in the light of the circumstances which we have mentioned above.

8. Likewise, reference is made to a decision of Sambasiva Rao, Actg. C.J., and Madhava Rao J. in I.T.Cs. Nos. 109, 110, 111 and 112 of 1974 [Addl. Commissioner of Income Tax Vs. Rasheed Ahmed, (Appendix)], where certain questions were framed and the Tribunal was directed to state a case and refer them to the High Court. Once again this was on the basis of the facts in that case. The legal principle has been clearly laid down by the Supreme Court and it has been followed by this court in Additional Commissioner of Income Tax Vs. Narayanadas Ramkishan, .

9. The facts and circumstances of the case on hand have already been noticed by us. The department has not shown anything other than the circumstance that the explanation tendered by the assessee had not been accepted by the assessing authority. In the absence of any proof or material produced by the department that the assessee has acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct, the Tribunal rightly, in our view, declined to frame the question" as sought by the department and refer the matter to the High Court. Since the view taken by the Tribunal while setting aside the penalty and also in declining to make a reference to this court is fully in accordance with the well-established legal position, we see no further need or necessity to call upon the Tribunal to frame exactly the same question and refer it to us.

10. For these reasons, we dismiss the Income Tax case. In view of the circumstances of the case, there will be no order as to costs.