
(1973) 08 AHC CK 0015

In the Allahabad High Court

Case No : Income-tax Reference No. 337 of 1972

ADDITIONAL COMMISSIONER OF Income Tax, LUCKNOW

APPELLANT

Vs

SMT. TRIVENI DEVI.

RESPONDENT

Date of Decision : 14-08-1973

Acts Referred:

Income Tax Act, 1961 — Section 183, 2, 256, 271, 86

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Income Tax Act, 1961 — Section 183, 2, 256, 271, 86

Citation : (1974) 97 ITR 390

Hon'ble Judges : Gulati, J

Bench : Division Bench

Judgement

GULATI J. - This is a reference u/s 256(1) of the Income Tax Act, 1961. The statement of the case sent along with the reference is a consolidated statement pertaining to assessment years 1960-61, 1961-62, 1962-63, 1963-64, 1964-65 and 1965-66. A common question of law arises in all these cases.

The assessee, Smt. Triveni Devi, was a partner in the relevant assessment years in a partnership firm known as "M/s. Banaras Chemical Factory, Varanasi". As a result of a search in the business premises of the firm and the residential houses of the partners, the Income Tax department recovered certain books of accounts and documents showing that the firm had been concealing its income. Supplementary assessments were made against the firm levying tax on the concealed income. The Income Tax Officer also initiated proceedings for levying penalty u/s 271(1)(c) of the Act and in due course the Inspecting Assistant Commissioner of Income Tax levied the following penalties :

Assessment years

Amount imposed as penalty

Rs.

1960-61

28,015

1961-62

15,333

1962-63

22,933

1963-64

21,150

1964-65

29,741

1965-66

22,062

Separate proceedings were taken for the imposition of penalty against the partners including the assessee and ultimately penalties of varying amounts were levied for the six assessment years in question. When the matter finally went before the Income Tax Appellate Tribunal, the department concealed in the case of two partners that as penalty had been levied on the firm, no separate penalty had been levied in case of the assessee such a concession was not made and the Tribunal dealt with the question on merits. It accepted the assessee's plea that penalty having been imposed on the firm, no separate penalty was leviable upon the assessee in respect of the same income. The Commissioner of Income Tax applied for a reference and the Tribunal has submitted the following question for our opinion :

"Whether, on the facts and circumstances of the case, the Appellate Tribunal was legally rightly holding that the imposition of penalty on the partner with respect to the same concealed income for which penalty had already been imposed on the firm as unregistered firm was illegal?"

Section 271(1)(c) provides for penalty where a person has concealed the particulars of his income or has furnished inaccurate particulars of such income. u/s 2(31) of the Income Tax Act, 1961, "person" includes a firm. Thus, penalty can be levied upon a firm. Section 271(2) provides that, "when the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, then, notwithstanding anything contained in the other provisions of the Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm."

In the instance case the firm of which the assessee was a partner was a registered firm. But, for purposes of imposing penalty, it was treated as an

unregistered firm. In the case of an unregistered firm, tax is levied upon the entire income of the firm treating the firm to be a unit unlike a registered firm where substantial part of the tax is borne by the partners corresponding to their shares.

Now, a firm, even though it is an assessable unit for purposes of the Income Tax, is not a legal person or a juridical entity - see *Dulichand Laxminarayan v. Commissioner of Income Tax*. Thus, any tax imposed upon a firm is in fact a tax upon the partners. That is why a provision has been made in clause (iii) of section 86 that tax is not payable by a person who is a partner of an unregistered firm in respect of a portion of the income of the firm upon which tax is payable by the firm. This provision has been enacted to avoid double taxation of the same income in the hands of the same person. There is no such provision with regard to penalty. But obviously, the same principle would apply in the case of penalty also. If it is not permissible to levy tax twice over in the hands of the same person in respect of a particular income, penalty which is leviable with reference to that income can also not be levied twice over, once in the hands of the firm and again in the hands of its partners. In fact, as pointed out by the Supreme Court in *C. A. Abraham v. Income Tax Officer*, "a penalty is nothing but an additional tax and the principle contained in clause (iii) of section 86 would apply as much to penalty as to tax. Even if penalty is regarded as punishment, a person cannot be punished more than once in respect of the same offence. As already pointed out above penalty levied upon an unregistered firm is in fact a penalty imposed upon the partners so that the imposition of penalty in respect of the same income in the hands of the partners would amount to double punishment. No provision has been brought to our notice under which such a course can be adopted.

For the reasons stated above, we answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to the costs which we assess at Rs. 200.

Question answered in the affirmative.