

(1973) 07 KAR CK 0013

In the Karnataka High Court

Case No : Income-tax Reference Case No. 21 of 1971

All India Sewing Machine Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-07-1973

Acts Referred:

Income Tax Act, 1961 — Section 139 (1), 256 (1), 271 (1) (a)

Citation : (1974) 96 ITR 206

Hon'ble Judges : G.K. Govinda Bhat, C.J.;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; Balakrishna, for S.R. Rajasekhara Murthy, for the Respondent

Judgement

Govinda Bhat, C.J.—The Income Tax Appellate Tribunal, Bangalore Bench, has stated a case for the opinion of this court u/s 256(1) of the Income Tax Act, 1961, hereinafter called "the Act", and referred the following questions of law :

"Whether, on the facts and in the circumstances of the case, levy of penalty u/s 271(1)(a) is valid in law ?"

2. With the consent of the learned counsel for the assessee and the department, we recast the question as follows :

"Whether, on the facts and in the circumstances of the case, the levy of penalty u/s 271(1)(a) is justified in law ?"

3. The assessee is a registered firm and the relevant accounting period was the financial year ended on March 31, 1966. The return of income u/s 139(2) became due on October 7, 1966. The assessee did not file its return by the said date nor did it apply for extension of time until December 17, 1966. The request for extension of time made on December 17, 1966, was not granted by the Income Tax Officer. The return was filed on February 22, 1967, and thereafter the assessment was finalised on February 28, 1967, in the status of the registered firm. The firm's Income Tax amounted to Rs. 4,565 while the interest

u/s 139(1), proviso (iii), was Rs. 38.

4. The Income Tax Officer issued a show cause notice as to why penalty shall not be levied u/s 271(1)(a) of the Act for belated return. The assessee submitted its explanation. Thereafter, the Income Tax Officer made an order on 30th June, 1967, levying a penalty of Rs. 2,960. Appeal preferred to the Appellate Assistant Commissioner by the assessee against the said order was unsuccessful. Second appeal before the Income Tax Appellate Tribunal, Bangalore Bench, in I.T.A. No. 3506 of 1968-69 was also unsuccessful except to the limited extent of reduction of penalty to Rs. 2,086.

5. Before the Tribunal, a number of grounds were urged on behalf of the assessee, but before us, the learned counsel for the assessee restricted his arguments to only one point, viz., that the assessing authority as well as the appellate authorities have totally misdirected themselves on a question of law. Its learned counsel, Sri K. Srinivasan, submitted that the burden is on the department to show that the delay in the submission of the return was without reasonable cause and that the mere rejection of the explanation offered by the assessee for the belated return was not sufficient to attract the penalty. We have been taken through the order of the Income Tax Officer as well as the orders of the two appellate authorities.

6. Section 271(1)(a) of the Act confers jurisdiction on the Income Tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under the Act to direct any assessee to pay by way of penalty the sums calculated in the manner provided under the said sub-section. The condition precedent to be satisfied for the Income Tax Officer to levy penalty is that the assessee has without reasonable cause failed to furnish the return or has without reasonable cause failed to furnish it within the time allowed by law.

7. Section 271(1)(a) is in pari materia with Section 18(1)(a) of the Wealth-tax Act, 1957. This court had occasion to consider the scope of the power u/s 18(1)(a) of the Wealth-tax Act in Writ Petitions Nos. 3125 to 3129 of 1971, Michael Fernandes Vs. Commissioner of Wealth Tax, Mysore and Another, decided on 12th July, 1973. This is what this court stated in the said decision :

"It is clear from a perusal of the above provision that the Wealth-tax Officer has to satisfy himself that the assessee has without reasonable cause failed to furnish the return which he is required to furnish under the Act. It means that the department must decide that the assessee had no reasonable cause for not filing the return within the time."

8. This court relied on the decision of the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, although the said case arose under the Orissa Sales Tax Act. The Kerala High Court in Dawn and Co. Vs. Commissioner of Income Tax, has applied the principles laid down in Hindustan Steel Ltd. case to a case of a penalty u/s 271(1)(a) of the Act. The Kerala High Court stated that "the words "has without reasonable cause failed to furnish it within the time allowed" in

Section 271(1)(a) of the Income Tax Act, 1961, shows that mens rea is an ingredient to be proved by the department before imposition of penalty, that a mere rejection of the explanation of the assessee, would not automatically mean that the necessary ingredient of Section 271(1)(a) has been made out, and that it is the duty of the department to point out circumstances from which an inference that the assessee acted deliberately in violation of law can be drawn." In Hindustan Steel Ltd. case, the Supreme Court has stated that "the liability to pay penalty does not arise merely upon proof of default; that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation."

9. There is no finding by any of the authorities to the effect that the assessee in the instant case acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation. The Income Tax Officer who levied the penalty rejected the explanation offered by the assessee on the ground that it was obligatory on the part of the assessee to adjust properly its affairs so as to comply with the statutory requirements and that if the assessee had genuine difficulties, it should have applied for extension of time before October 7, 1966, when the return became due. The Appellate Assistant Commissioner referred to the explanation offered by the assessee and appears to have been satisfied that the facts set out therein are true. This is what the Appellate Assistant Commissioner stated in paragraph 4 of his order:

"It appears as a fact that the appellant's business is spread over the three states of Mysore, Andhra and Madras. Looking at the appellant's business one may be able to concede without much argument that the business is voluminous."

10. He has further stated that he is unable to agree with the assessee's representative that by themselves complexities and difficulties of business could be looked upon as a reasonable cause justifying a belated submission of the return. The Tribunal in paragraph 13 of its order stated that the voluminous nature of accounting, the large number of branches, the present necessities of business and such other reasons can hardly be said to provide reasonable cause. Neither the Income Tax Officer nor the appellate authorities have borne in mind the principles that ought to guide them in deciding the question as to under what circumstances the liability to pay penalty arises. They appear to have proceeded on an erroneous view that if there is default and the assessee's explanation is not accepted, penalty ought to be levied. The erroneous view, in our opinion, has entirely vitiated the decision of the authorities below. As stated earlier there is no material to hold that the assessee had deliberately failed to submit its return within the time allowed by law or that its conduct was contumacious or dishonest. On the facts and circumstances of the case, the levy of penalty u/s 271(1)(a), in our opinion, was not justified in law. Accordingly, we answer the question as recast in the negative and in favour of the assessee.

11. The assessee is entitled to its costs. Advocate's fee, Rs. 250.