

(1983) 01 AHC CK 0012

In the Allahabad High Court

Case No : Income-tax Reference No. 1373 of 1976

Budhar Singh and Sons

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 04-01-1983

Acts Referred:

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

Citation : (1983) 34 CTR 322 : (1983) 142 ITR 180 : (1983) 13 TAXMAN 317

Hon'ble Judges : V.K. Mehrotra, J; R.M. Sahai, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; M. Katju, for the Respondent

Judgement

R.M. Sahai, J.—The Income Tax Appellate Tribunal has referred the following question of law for the opinion of this court:

" Whether, on the facts and in the circumstances of the case, the order of the Appellate Tribunal upholding the penalty order u/s 271(1)(a) of the Act was justified ?"

2. Facts, in brief, are that the assessee, a partnership firm, carried on business in foodgrains and oilseeds on wholesale basis. The previous year relevant to the assessment year 1967-68 was the first year of its business. For this year a return should have been filed on September 30, 1967, but it was filed on March 16, 1970. The income shown in the return was Rs. 2,351 which, however, was not satisfactory, and the ITO imposed a penalty of Rs. 6,550. The ITO also issued a show-cause notice to the assessee for its default in filing the return u/s 139(1) of the Act and after considering the explanation as not satisfactory, imposed a penalty of Rs. 6,550. The order was upheld by the AAC and the Tribunal. The Tribunal held that the assessee inflated the expenses by debiting the investment made on the jeep in batta khata. According to the Tribunal the sum of Rs. 16,000, investment in jeep, debited under the expense for batta khata in the summary of profit and loss account was capital expenditure. Therefore, it could

not be held that the assessee had a bona fide belief that its income for the year in dispute was below the taxable limit.

3. Penalty u/s 271(1)(a) of the Act is leviable if the ITO is satisfied that any person has, without reasonable cause, failed to furnish the return of total income which he was required to furnish under Sub-section (1) of Section 139 or by such notice given under Sub-section (2) of Section 139 or Section 148 or has, without reasonable cause, failed to furnish it within the time allowed and in the manner required by Sub-section (1) of Section 139 or by such notice, as the case may be.

4. In Commissioner of Income Tax Vs. N. Khan and Brothers, , while construing this sub-section, it was held by a Division Bench of our court that, now, u/s 139(1), a duty is cast upon any person to file a voluntary return if his income exceeds the maximum amount which is not chargeable to tax. The question arises as to which income is contemplated by this provision; the income which the assessee believes to be his income or which is finally assessed by the ITO. It is clear that at the time when a person is required to file a voluntary return, no assessment has yet been made against him. He is thus to be guided by what he himself believes to be his income. It is possible that it happens very frequently that an assessee may not consider a particular item to be his income and yet the ITO may hold otherwise.

5. This decision was followed in COMMISSIONER OF INCOME TAX, ASSAM. Vs. ASSAM AUTOMOBILE AND ACCESSORIES AGENCY., and in Omkar Estate Corporation Vs. Commissioner of Income Tax, Gujarat, . It was held by the Gujarat High Court that (p. 640):

"The addition made by the Income Tax Officer in the course of the assessment on account of undervaluation of the closing stock, could not have been a fact to the knowledge of the assessee and, therefore, not filing a return on the basis of the income which he believed to be true shall not expose him to the penalty proceeding as a result thereof."

6. It, therefore, appears that the failure to file a return without reasonable cause u/s 271(1)(a) cannot normally be judged by the finding recorded by the assessing authority in the assessment proceeding. It has to be established independently in penalty proceedings. And as held in Commissioner of Income Tax Vs. N. Khan and Brothers, , so long as an assessee discloses a particular income in its return and such disclosure is bona fide, he cannot be penalised because the ITO does not accept, it.

7. It has not been found by the Tribunal that the assessee concealed any income. The summary of profit and loss account filed by the assessee was not disbelieved. Only the investment on jeep was not allowed. May be, but the assessee could not have assumed or known it at the time of filing the return. And, this was the first year of business. It cannot, therefore, be held that there was no reasonable cause for not filing the return.

8. Learned counsel for the Department argued that the finding on the question of bona fide is a finding of fact and the Tribunal having held that the assessee had inflated its expenses, this court is bound by it in its advisory jurisdiction. Therefore, the question referred should be answered in the affirmative. Bona fides of an assessee or the failure to file a return without reasonable cause are inferences which arise, out of the facts of each case. If on the material the Tribunal has drawn an incorrect inference we see no reason why this court cannot interfere.

9. For the reasons stated above, we answer the question referred to us in the negative, in favour of the assessee and against the Department. The assessee shall be entitled to its costs which are assessed at Rs. 250.