
(1957) 10 KL CK 0001
In the High Court Of Kerala
Case No : Writ Petition No. 215 of 1957

C. A. Abraham

APPELLANT

Vs

Income Tax Officer, Kottayam and Another

RESPONDENT

Date of Decision : 31-10-1957

Acts Referred:

Income Tax Act, 1922 — Section 22, 23, 28, 28(1), 28(1)(c)

Citation : (1958) 33 ITR 287 : (1957) 1 KLJ 1079

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Judgement

M.S. Menon, J.—The petitioner seeks the cancellation of three orders of the Income Tax Officer, Kottayam, Exhibits P2(a), P2(b) and P2(c) dated November 17, 1955. Exhibit P2(a) relates to the assessment year 1124, Exhibit P2(b) to the assessment year 1950-51 and Exhibit P2(c) to the assessment year 1951-52. The concluding portions of the three orders read as follows:

Exhibit P2(a):

Notice u/s 41 was duly served on the assessee on December 6, 1954, and he was directed to show cause why penalty should not be imposed. His explanation is not satisfactory. I, therefore, hold that the assessee had deliberately concealed material particulars of income and manipulated accounts. The above offence comes within the purview of section 41(1)(c) of the Travancore Income Tax Act.

With the prior approval of the Inspecting Assistant Commissioner of Income Tax, Ernakulam, I impose a penalty of Rs. 2,000.

This should be paid on or before December 17, 1955.

Exhibit P2(c):

Notice u/s 28(3) was duly served on the assessee on December 6, 1954, and he was directed to show cause why penalty should not be imposed. No proper explanation is available. I, therefore, hold that the assessee had deliberately

concealed material particulars of income. The above offence comes within the purview of section 28(1)(c).

With the prior approval of the Inspecting Assistant Commissioner of Income Tax, Ernakulam, I impose a penalty of Rs. 22,000.

This should be paid on or before December 17, 1955.

2. The assessee was an unregistered firm trading under the name and style of M.P. Thomas & Co., Kottayam. It consisted of two partners, the petitioner and one M.P. Thomas, who died on the 11th October, 1949. It is common ground that section 44 of the Indian Income Tax Act, 1922, applies to the facts of the case and the only controversy is as to whether that section will enable the imposition of a penalty u/s 28(1) of the Indian Income Tax Act, 1922.

3. Section 44 of the Indian Income Tax Act, 1922, reads as follows:

Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, respect of income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.

4. As to whether this section will enable an imposition of a penalty u/s 28(1), divergent views have been expressed by the High Courts of Madras and Andhra Pradesh. The Madras High Court decision is *Veerappan Chettiar v. Commissioner of Income Tax* in which that court expressly dissented from the decision of the Andhra Pradesh High Court in *Mareddi Krishna Reddi v. Income Tax Officer* and said:

We are clearly of opinion, that section 44 did not authorise the Income Tax Officer to levy a penalty u/s 28(1) on the assessee in this case, a person" who had ceased to be in existence on the relevant date, 20th May, 1954.

What the Madras High Court did was to follow certain decisions u/s 25A of Indian Income Tax Act, 1922, which deals with assessments after the partition of Hindu undivided families, and say that neither section 25A nor section 44 allows the imposition of a penalty. (*Commissioner of Income Tax v. Sanichar Sah Bhim Sah and Raju Chettiar v. Collector of Madras*).

5. After studying the two decisions carefully we have come to the conclusion that the correct position is as stated in *Mareddi Krishna Reddi v. Income Tax Officer*. In that case Subba Rao, C.J., said:

Section 44 in an abbreviated form provides for the joint and several liability of the partners of a discontinued firm and for the assessment and payment of the tax. But this section adds the following words, which are not present in section 25A, all the provisions of Chapter IV shall, so far as may be, apply to any such

assessment. Is section 28 a provision relating to any such assessment ? Section 28 is one of the sections in Chapter IV. It imposes a penalty for the concealment of income or the improper distribution of profits. The defaults made in furnishing a return of the total income, in complying with a notice under sub-section (4) of section 22 or sub-section (2) of section 23 and in concealing the particulars of the income or deliberately furnishing inadequate particulars of such income are penalised under that section. The defaults enumerated there relate to the process of assessment. Section 28, therefore, is a provision enacted for facilitating the proper assessment of taxable income and can properly be said to apply to an assessment under Chapter IV. We cannot say that there is a lacuna in section 44 such as that found in section 25A of the Act.

The penalty order in respect of the assessment year 1124 was passed u/s 41(1) of the Travancore Income Tax Act, 1121. Sections 41(1) and 58 of the Travancore Income Tax Act, 1121, correspond to sections 28(1) and 44 of the Indian Income Tax Act, 1922.

6. It was agreed that if our view is the same as that embodied in *Mareddi Krishna Reddi v. Income Tax Officer* no other question arises for consideration. We are in entire agreement with that view and it follows that this petition should fail.

7. The petition fails and is hereby dismissed, though in the circumstances of the case without any order as to costs.

Petition dismissed.