

(1982) 12 CAL CK 0014

In the Calcutta High Court

Case No : Income-tax Reference No. 262 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Amalendu Paul

RESPONDENT

Date of Decision : 21-12-1982

Acts Referred:

Income Tax Act, 1961 — Section 131, 271(1)

Citation : (1983) 34 CTR 174 : (1984) 145 ITR 439 : (1983) 13 TAXMAN 325

Hon'ble Judges : Suhas Chandra Sen, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : M.K. Dhar and Ram Chandra Prosad, for the Appellant;S.K. Chakraborty and S. Kar, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 256(2) of the I.T. Act, 1961, the following question has been referred to this court:

"Whether, on the facts and in the circumstances of the case, and in view of the fact that the assessee filed a revised return declaring the unexplained cash credit of Rs. 35,000 as his income, the Tribunal misdirected itself in law in holding that the provisions of Section 271(1)(c) of the Income Tax Act, 1961, were not attracted in this case and in that view cancelling the order of penalty made u/s 271(1)(c) of the Income Tax Act, 1961?"

2. The facts of this case are as follows :

The assessee had filed originally a return on June 28, 1963, declaring an income of Rs. 45,251. The ITO noticed cash credits aggregating to Rs. 35,000 which were claimed to be a loan taken from one Sri Sudhangshu Mandal. The assessee was required to prove the source of the credits and summons u/s 131 of the I.T. Act, 1961, was also issued in this connection. The assessee later requested the ITO to issue summons to another address which was stated to be a new address of the creditor concerned, but still failing to secure the attendance of the creditor to substantiate his contention regarding the source of the creditors, he submitted

a revised return on December 16, 1967, including therein the credit of Rs. 35,000 as his income. The assessment was completed including the amount of Rs. 35,000 offered by the assessee for taxation. The IAC in levying penalty rejected the contention of the assessee that no penalty should be levied in this case as the assessee had voluntarily surrendered the amount in the revised return, on the ground that the assessee filed the revised return only after the ITO started investigation and when the assessee had no other course open as he was caught. In the circumstances, the IAC held that the assessee was guilty of concealing the income in the original return filed by him. He, consequently, levied a penalty of Rs. 14,419 u/s 271(1)(c) read with Section 274(2) of the I.T. Act, 1961.

3. The assessee preferred an appeal before the Appellate Tribunal. The Tribunal observed as follows:

"We have examined the order-sheet in the assessment record and find from the noting in the order-sheet dated December 16, 1967, that the assessee's representative had appeared before the Income Tax Officer and stated that he was unable to produce any evidence of the loan taken in the name of Sri Sudhansu Mondal, and the Income Tax Officer pointing out that at the assessee's instance notice u/s 131 were sent to different addresses furnished by him, the assessee has submitted a revised return showing the amount of loan of Rs. 35,000 as income from other sources, as the same cannot be proved, with a prayer that no penalty may be levied. It is evident from the foregoing that the surrender by the assessee of the amount of cash credits for taxation in the revised return was because he was unable to prove by satisfactory evidence his claim of the amount being loan taken from the creditor concerned and not because he admitted the amount to be his undisclosed income. In the circumstances, we hold that mere inclusion of the amount in the revised return by the assessee for his inability to prove his claim, does not amount to his admission of the amount as his income and his having concealed the same. We further hold that the principle of the decision of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , will equally apply to the facts of this case and as the Department has not brought any material apart from surrender of the amount for taxation by the assessee for his inability to prove his claim and the inclusion of the same in the assessment, provisions of Section 271(1)(c) cannot be said to have been attracted. We accordingly cancel the order of penalty and direct the amount of penalty, if already collected, to be refunded to the assessee."

4. We have set out the relevant portions of the order of the Tribunal where the noting in the order-sheet has been set out and it is evident from it that the assessee submitted a revised return showing the amount of loan of Rs. 35,000 as income from other sources, as the same could not be proved, with a prayer that no penalty might be levied. It is well settled that the onus of proving that the assessee concealed the particulars of his income or failed to disclose his

income is on the Revenue and the failure to prove a particular item is not income would not ipso facto prove concealment in penalty proceedings. This principle is well settled since the decision of the Supreme Court in the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , and a series of decisions on this point thereafter. In this case on behalf of the Revenue it was contended that here the assessee had admitted that he had failed to disclose his income. It is true that there is a subsequent return indicating the income in question but that return was filed with a condition that this was including the same as income from other sources as the same could not be proved. It appears to us on the order-sheet referred to hereinbefore that the admission, if any, was a conditional admission and could not be relied on for imposing penalty as an unconditional admission. This view was also corroborated by the observations of this court in the case of Commissioner of Income Tax Vs. Sarda Rice and Oil Mills, . We may further note that the findings of the Tribunal in this case had not been challenged either on perversity or on the basis of no evidence. Upon this finding and in the facts and circumstances of this case, the question must be answered in the negative and in favour of the assessee.

5. In the facts and circumstances of the case, parties will pay and bear their own costs.

Suhas Chandra Sen, J.

6. I agree.