
(1996) 04 PAT CK 0044

In the Patna High Court

Case No : Taxation Case Nos. 44 and 45 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Ashok Kumar Jha

RESPONDENT

Date of Decision : 24-04-1996

Acts Referred:

Citation : (1996) 04 PAT CK 0044

Judgement

1. The Income Tax Appellate Tribunal has referred the following questions of law pursuant to the order of this court for its opinion u/s 256(2) of the Income Tax Act, 1961, at the instance of the Revenue :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner, who deleted the penalty u/s 271(1)(c) of the Income Tax Act by wrongly putting the onus upon the Department ?

(2) Whether, on the facts and in the circumstances of the case, the deletion of penalty u/s 271(1)(c) of the Act is justified when Explanation to Section 271(1) (c) is attracted ?"

2. The material facts are as follows :

The assessee filed returns showing income of Rs. 9,400 and Rs. 4,500 from truck business for the assessment years 1966-67 and 1967-68, respectively. The Income Tax Officer, in the course of assessment proceedings, found that the assessee had made investment of Rs. 42,100 for purchase of the truck. As to the source of investment, it was the case of the assessee before the Income Tax Officer that Motor and General Finance Limited, New Delhi, had arranged finance and the assessee had made payment to the financier by instalments. The Income Tax Officer noted that 12 instalments of the total value of Rs. 17,000, had been paid to the financier during the assessment year 1966-67 and, likewise, 12 instalments of the value of Rs. 20,400 had been paid during the assessment year 1967-68. In the absence of any supporting evidence, the Income Tax Officer took

the view that the assessee had paid the instalments from his current income and, accordingly, he assessed the income of the assessee at Rs. 24,400 and Rs. 21,000, respectively, subject to depreciation. He, in the circumstances, initiated penalty proceedings u/s 271(1)(c) of the Act and finally imposed penalty of Rs. 1,831 and Rs. 1,405 for the two years which were later enhanced to Rs. 4,500 and Rs. 9,003 after rectification as returns had been filed on September 27, 1972, and as per the law then applicable the penalty was to be levied on the basis of the concealed income and not on the basis of the tax sought to be evaded.

3. The assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner deleted the penalties for both the years. In so doing, he took the view that mere rejection of the explanation as to non-submission/concealment of income was not sufficient for imposing the penalty u/s 271(1)(c) and the onus lay on the Department to prove the fact that the assessee had deliberately concealed the income or had furnished the incorrect particulars. He also observed that no element of mens rea had been found on the part of the assessee, by the Income Tax Officer. On appeal by the Department, the Income Tax Appellate Tribunal while upholding the order of the Appellate Assistant Commissioner observed that there was no material on record from which it could be inferred that the assessee had either concealed his income or committed fraud or gross or wilful neglect in returning the assessed income.

4. Mr. L. N. Rastogi, learned counsel for the Revenue, has assailed the findings of the Appellate Assistant Commissioner as well as the Tribunal. According to counsel, the findings and the order recorded by them are in teeth of the Explanation appended to Section 271(1)(c) of the Act as inserted by the Finance Act, 1964. He has placed reliance on *Chuharmal Vs. Commissioner of Income Tax, M.P.*, ; *Commissioner of Income Tax Vs. Nathulal Agarwala and Sons*, and *Commissioner of Income Tax Vs. Mussadilal Ram Bharose*, .

5. Section 271(1)(c), as it originally stood was as follows ;

" If the Income Tax Officer or the Appellate Assistant Commissioner, in the course of any proceedings under this Act, is satisfied that any person . . .

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty ..."

6. By the Finance Act, 1964, certain amendments were made in these provisions. The word "deliberately" as occurring in Clause (c) was omitted from the main provision and an Explanation was added in these terms ;

" Explanation.--Where the total income returned by any person is less than eighty per cent. of the total income (hereinafter in this Explanation referred to as the correct income) as assessed u/s 143 or Section 144 or Section 147 (reduced

by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) of this subsection." (emphasis* added).

7. The Supreme Court in the case of Chuharmal Vs. Commissioner of Income Tax, M.P., has taken the view where the returned income is less than eighty per cent. of the assessed income the Explanation becomes applicable and the onus which lies initially on the Revenue to prove concealment of income gets discharged. This court in Commissioner of Income Tax Vs. Nathulal Agarwala and Sons, in a detailed judgment after considering various authorities on the point observed that (at page 309): "the principal logical import of the Explanation is to shift the burden of proof from the Revenue on to the shoulders of the assessee in the class of cases where the returned income was less than 80 per cent. of the income assessed by the Department." The aforesaid decision which was rendered by a Full Bench of this court was later approved by the Supreme Court in Commissioner of Income Tax Vs. Mussadilal Ram Bharose, . The question as to the onus of proof in cases where the returned income is less than 80 per cent. of assessed income is thus not res integra.

8. In the instant case, there does not appear to be any dispute that the income returned by the assessee was less than 80 per cent. of the income assessed by the Department. The Tribunal in coming to the impugned conclusions completely lost sight of the Explanation. It did not consider the effect of deletion of the word "deliberately" from the main provision and the deeming clause of the Explanation, Had the case been of the pre-1964-65 assessment period, the order would have been a perfectly correct order. But the assessment years in question being 1966-67 and 1967-68, the matter had to be considered as per the amended provisions. In view of the clear and specific pronouncements of this court as well as the apex court, the order of the Tribunal cannot be said in accordance with law.

9. The questions referred for opinion of this court are, accordingly, answered in the negative, that is, in favour of the Revenue and against the assessee. As there is no appearance on behalf of the assessee we make no order as to costs.