

(1972) 02 AHC CK 0016

In the Allahabad High Court

Case No : Income-tax Reference No. 480 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Babu Ram Chander Bhan

RESPONDENT

Date of Decision : 23-02-1972

Acts Referred:

Income Tax Act, 1961 — Section 28(1), 66(1)

Citation : (1973) 90 ITR 230

Hon'ble Judges : R.S. Pathak, J; Hari Swarup, J

Bench : Division Bench

Advocate : R.R. Misra, for the Appellant; S.D. Agarwal, for the Respondent

Judgement

Hari Swarup, J.—At the instance of the Commissioner of Income Tax, the Income Tax Appellate Tribunal has referred the following questions of law u/s 66(1) of the Income Tax Act:

" (1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal, was justified in holding that there was no evidence on record at the time the assessments were completed to show that the assessee-firm had concealed its income or had furnished inaccurate particulars thereof ?

(2) If the answer to the above question is in the negative, whether the Income Tax Officer could, at the time of levying the penalty u/s 28(1)(c) of the Act, take into account also the additional evidence brought on record after the assessments were completed ? "

2. The assessee is a partnership firm which carried on business in the name of M/s. Baburam Chander Bhan. It had four partners : Baburam, Mahabir Prasad, Satya Deo and Shiv Charan Lal. It carried on the business of purchasing plain bangles and selling them after processing them. There was another firm in the name of Shanker Bangle Stores at Bangalore with four partners which included Baburam who was also a partner in the assessee-firm." The Income Tax Officer found several remittances being made by the Bangalore firm through telegraphic

transfers and demand drafts drawn in favour of Lakshmi & Company, Satya Deo and Hari Chandra, etc., which were credited in the account of Lakshmi & Co. with the Shikohabad branch of the Central Bank of India. The Income Tax Officer made certain enquiries and found that the account in the name of Lakshmi & Co. was operated by Babulal and Kailash Chand, who were introduced to the bank by one Mansaram, the father-in-law of Baburam. The Income Tax Officer also found that certain cheques had been endorsed in the name of Satya Deo. Babulal was found by him to be an employee of Satya Deo. Satya Deo on November 23, 1961, wrote a letter to the Inspecting Assistant Commissioner at Lucknow wherein he made an offer that the proceeds of the sales received by Lakshmi & Co. be assessed as the petitioner's income. The Income Tax Officer, however, concluded that Satya Deo was not the real owner of this income and Lakshmi & Co., was only a benami name adopted by the assessee for business. He included an additional amount on the basis of this finding in the income of the assessee. The Income Tax Officer also initiated proceedings for imposing penalty on the assessee u/s 28(1)(c) of the Indian Income Tax Act, 1922.

3. Appeals were preferred against the assessment orders by Satya Deo as well as by the assessee-firm. On July 8, 1962, Baburam gave a statement which was recorded on the order-sheet in which he agreed that the telegraphic transfers and demand drafts in the name of Satya Deo may be treated in his hands and the balance may be taxed in the firm's name at the net rate of ten per cent. The Income Tax Officer considering the material before him imposed the penalty. Penalty notices were issued in respect of the assessment years 1957-58 and 1958-59. The Income Tax Officer imposed penalties of Rs. 15,981 for the assessment year 1957-58 and Rs. 5,031 for 1958-59. The assessee filed appeals against the orders imposing penalty, but the Appellate Assistant Commissioner dismissed the appeals and confirmed the penalty. While the appeals were pending, the assessee addressed a letter to the Commissioner of Income Tax, U. P., Lucknow, on December 27, 1963 and in it suggested that the matter be compromised and a lower penalty may be imposed. The assessee-firm preferred second appeals against the penalty order before the Income Tax Appellate Tribunal. The Tribunal allowed the appeals and cancelled the penalties. It was contended before the Tribunal by the assessee that the material which came into existence subsequent to the date on which the Income Tax Officer recorded his satisfaction u/s 28(1), viz., March 21, 1962, could not be taken as relevant material for determining if the assessee had concealed particulars of his income or had deliberately furnished inaccurate particulars of such income in his returns. The Tribunal accepted this contention of the assessee, and also the contention that the material which was available with the Income Tax Officer before the date of recording satisfaction provided no evidence to prove that the assessee had concealed particulars of his income or had deliberately furnished inaccurate particulars thereof. The revenue, feeling aggrieved by this order, applied u/s 66(1) of the Act and the aforementioned two questions have been referred to us by the Tribunal.

4. Having regard to the controversy between the parties before the Tribunal and the decisions given by the Tribunal, we consider that the questions framed by the Tribunal do not correctly bring out the controversy. We accordingly reframe the questions in the following manner:

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that there was no evidence on record when the penalty proceedings were initiated to establish that the assessee-firm had concealed its income or had deliberately furnished inaccurate particulars thereof ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Officer, at the time of levying the penalty u/s 28(1)(c) of the Act, was entitled for the purpose of levying penalty to take into account the evidence brought on record after the penalty proceedings were initiated in addition to the material already on the record before those proceedings were initiated? "

5. The Tribunal took into consideration only the material which was on the record of the case before the proceedings for penalty were initiated by the Income Tax Officer and came to the conclusion that it was not possible to infer therefrom that the assessee had concealed the particulars of income or had deliberately furnished inaccurate particulars thereof. The material that was available to the Income Tax Officer till the date of initiation of the proceedings was of a circumstantial character and at best could indicate that Satya Deo was connected with the business carried on in the name of Lakshmi & Co. The final link which could connect the business carried on in the name of Lakshmi & Co. with the business of the assessee-firm was missing. In this view, the Tribunal was right in holding that there was no evidence on record till the initiation of penalty proceedings to prove that the assessee had concealed the particulars of his income or deliberately furnished inaccurate particulars so as to make him liable to penalty. The first question as reframed by us will thus have to be answered in the affirmative.

6. The penalty proceedings were initiated on 21st March, 1962. Two pieces of additional evidence, according to the department, came into existence subsequently, which were sufficient to provide the missing link and to connect the business of Lakshmi & Co. with the business of the assessee-firm. The first piece of evidence which came into being on July 28, 1962, is the statement of Baburam, one of the partners of the assessee-firm, to the following effect:

" We agree to the net rate of 10% and the telegraphic transfers and demand drafts in the name of Satya Deo to be treated in his hands and the balance may be taxed in the firm's case."

7. The penalty proceedings were -completed after this date, i.e., February 27, 1962. This evidence had come into existence during the assessment proceedings when they were at the appellate stage and before the penalty proceedings were finalised. We see no reason why the Income Tax Officer could not take this evidence into consideration while determining if the assessee was guilty of

concealing particulars of his income or deliberately furnishing inaccurate particulars thereof. Additional evidence is admissible in penalty proceedings and it is possible for the parties to bring on record additional material for determining if the penalty should be imposed. Hence, in our opinion, the additional material brought on record on July 28, 1968, could be taken into consideration.

8. The next item of evidence relied upon by the revenue came into existence on December 27, 1963. This was in the form of a letter addressed to the Commissioner of Income Tax by the assessee-firm. This evidence came into existence subsequent to the order of penalty passed by the Income Tax Officer. The letter was sent when the appeals were pending before the Appellate Assistant Commissioner. The Income Tax Officer could not have possibly taken into consideration this material while completing the penalty proceedings. In our opinion, this material will not be available for consideration."

9. Our answer to the second question thus must necessarily be that the income tax Officer could take into consideration the material which came into existence on July 28, 1962, referred to above in addition to the material that was already available to him prior to the initiation of the penalty proceedings for determining if the assessee was liable to penalty u/s 28(1)(c) of the Act. We answer the questions accordingly. In the circumstances, the parties will bear their own costs. Counsel's fee is assessed at Rs. 200.