
(1992) 09 AHC CK 0047

In the Allahabad High Court

Case No : Income-tax Reference No. 86 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Babu Ram Devendra Prakash

RESPONDENT

Date of Decision : 24-09-1992

Acts Referred:

Income Tax Act, 1961 — Section 256, 271(1), 271(3)

Citation : (1995) 123 CTR 266 : (1993) 204 ITR 706 : (1993) 66 TAXMAN 327

Hon'ble Judges : R.K. Gulati, J;Om Parkash, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K Gulati, J.—This is a reference u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). In pursuance of the directions of this court, the Income Tax Appellate Tribunal has referred the following three questions for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the term "total income" used in Section 271(3)(a) of the Income Tax Act, 1961, means total income as disclosed in the returns filed by the assessee or the total amount of income as finally computed in the manner laid down in this Act, as defined in Section 2(45) of the Income Tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the penalty order u/s 271(1)(a) was barred by limitation and the amendment brought about in Section 275 by Act No. 42 of 1970 was not applicable in this case, even though the penalty proceedings were pending before the Income Tax Officer when the amendment came into force with effect from April 1, 1971 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in cancelling the penalty imposed by the Income Tax Officer u/s 271(1)(a) of the Income Tax Act, 1961, for the assessment year 1965-66 ?"

2. The assessee is a registered firm of commission agents in foodgrains. For the assessment year 1965-66, its return of income u/s 139(1) of the Act was due on June 30, 1965. The assessee, however, filed a belated return on September 15, 1967, showing taxable income of Rs. 25,893 on which the assessment was completed on March 11, 1970, on a net taxable income of Rs. 88,055. It appears that the assessed income was reduced by Rs. 20,585 in appeal by the Appellate Assistant Commissioner. In due course, the Income Tax Officer initiated penalty proceedings u/s 271(1)(a) of the Act and subjected the assessee to a penalty of Rs. 17,618 on the finding that the assessee had not come forward with any explanation for furnishing a belated return. In appeal, the action was upheld except that the quantum of penalty levied was reduced partially. On further appeal the Income Tax Appellate Tribunal knocked off the impugned penalty in its entirety.

3. We have heard learned standing counsel for the Revenue. None had put in appearance on behalf of the assessee despite notice.

4. For the sake of convenience, we shall first take up question No. 3 for our consideration, The imposition of penalty was assailed before the Income Tax Appellate Tribunal basically on two grounds, namely, (1) that the assessee believed that its total income was below the maximum amount not chargeable to tax in the case of a registered firm and thus there was no legal obligation to file the return of its income, and (2) that the order imposing penalty was barred by limitation inasmuch as it was made after the expiry of two years from the completion of the proceedings, in the course of which the proceedings for imposition of penalty were initiated. Both these grounds found favour with the Income Tax Appellate Tribunal resulting in the deletion of the amount of penalty.

5. On behalf of the Revenue, it was contended that the belief entertained by the assessee, viz., that it had no taxable income, was misconceived for the assessment was completed on a taxable income of Rs. 88,055. It was also contended that the assessee was not entitled to the benefit of Section 271(3)(a) of the Act on which reliance has been placed by the Income tax Appellate Tribunal in its order,

6. The short question that requires our consideration is whether on the facts found by the Tribunal, it was justified in cancelling the imposition of penalty to which the assessee was subjected ?

7. Now, Section 139(1) of the Act casts an obligation on every person to furnish by the due date a voluntary return of his total income or the total income of any other person, in respect of which he is assessable, in the prescribed form, etc., if such income during the previous year exceeds the maximum amount which is not chargeable to Income Tax. Section 271(1)(a) of the Act provides for the consequences and imposition of penalty for non-filing or a delayed filing of the return without reasonable cause. It provides, inter alia, that if the Income Tax Officer is satisfied that any person has without any reasonable cause failed to

furnish the return of total income which he was required to furnish under Sub-section (1) of Section 139 of the Act or has without reasonable cause failed to furnish it within the time allowed, he may direct that such person shall pay the penalty specified in Sub-section (1) of Section 271 of the Act.

8. On a plain and combined reading of these provisions, it is apparent that where an assessee having taxable income and being obligated to file its return within the prescribed time, does not furnish it or submits it beyond the prescribed period, without reasonable cause, he can be subjected to penal action contemplated u/s 271(1)(a) of the Act.

9. The next question is as to which income is contemplated in Section 139(1) of the Act when it speaks of voluntary furnishing of the return where the income of a person during the relevant previous year exceeds the maximum amount not chargeable to tax, i.e., the income which the assessee believed to be his income or that which is finally assessed by the tax authorities.

10. A problem identical to that with which we are confronted, was the subject-matter of discussion before a Division Bench of this court in Commissioner of Income Tax Vs. N. Khan and Brothers, . It was ruled that the return of income contemplated u/s 139(1) of the Act is that which the assessee believes to be his income and not the income as finally assessed by the Income Tax Officer. The court held (headnote) :

"It is possible that an assessee may not consider a particular item to be his income and the Income Tax Officer may hold otherwise. In such a case, if what the assessee considers to be his income is less than the maximum not chargeable to tax, he is not required to file a voluntary return even if his income as finally assessed is more than such maximum, and he will not be liable to penalty for failure to file his return. It is essential that the belief of the assessee must be bona fide."

11. The question was once again considered by another Division Bench of this court in Budhar Singh and Sons Vs. Commissioner of Income Tax, . The court while reiterating the view expressed in the case of Commissioner of Income Tax Vs. N. Khan and Brothers, , pointed out that failure to file a return without "reasonable cause" cannot be judged by the findings recorded by the Income Tax authorities in the assessment proceedings. It must be established independently in penalty proceedings. So long as the assessee discloses a particular income in his return and the disclosure is bona fide, he cannot be penalised simply because the Income Tax Officer does not accept it.

12. Now, reverting to the case in hand, as observed earlier, the Income Tax Appellate Tribunal believed the explanation of the assessee that it could not file its return in time as it laboured under a bona fide belief that its income in the previous year relevant to the assessment year in question did not exceed the maximum amount not chargeable to tax. There is no whisper in any of the orders passed by the tax authorities including that of the Tribunal that, in submitting the

return of Rs. 25,893, the assessee had indulged in concealing its true income or the act of filing the return on an income of Rs. 25,893 was not a bona fide action. Mere non-furnishing or delayed furnishing of the return of income does not ipso facto attract penalty under Clause (a) of Section 271(1) of the Act unless such failure was without sufficient cause. Penalty u/s 271(1)(a) of the Act for failure to furnish a voluntary return of income within the period allowed, is attracted only if there is taxable income according to the bona fide calculation of the assessee and not because the assessment came to be made on a taxable income by the relevant authority. Where the breach flows from a bona fide belief that the defaulter is not liable to act in the manner prescribed by the statute and the relevant authority feels satisfied that the circumstances of the case establish that there exists no material to doubt the bona fides of the assessee, it would be well within its limits not to impose any penalty. The question whether or not the assessee failed without reasonable cause to furnish the return within the time allowed, is primarily and essentially a question of fact to be decided in a given case on the material placed before the authority concerned. If the assessee had honestly believed that its income was not taxable and its belief found favour with the Tribunal, we cannot say that the assessee had not submitted its return without reasonable cause and, in the circumstances, the Tribunal was not justified in directing deletion of the impugned penalty.

13. The argument that the assessee was not entitled to the benefit of Section 271(3)(a) of the Act is wholly misplaced. It may be noticed that the said section provides that no penalty for failure to furnish the return of his total income under Sub-section (1) of Section 139 of the Act shall be imposed on an assessee whose total income does not exceed the maximum amount not chargeable to tax in his case by Rs. 1,500. That section has no application to the facts of the instant case for it applies to a case where there is complete failure to furnish the return in accordance with the provisions of Section 139(1) of the Act. That section is not attracted to a case where a belated return is furnished. All that section provides is that in a case where the maximum total income chargeable to tax does not exceed by Rs. 1,500, no penalty u/s 271(1) of the Act shall be imposed. It is not in dispute that income up to Rs. 25,000 in the relevant assessment year was not taxable in the case of a registered firm and in terms of Section 271(3)(a) of the Act, no penalty was leviable if the total income of a registered firm did not exceed Rs. 26,500. As the assessee had filed a return of Rs. 25,893, which was marginally above the exemption limit, the Tribunal was invited to the provisions of Section 271(3)(a) of the Act to demonstrate that the Legislature itself provided for a latitude and no imposition of penalty was called for where the total income exceeds the maximum amount not chargeable to tax by Rs. 1,500. It is in this context that the Tribunal referred to the provisions of Section 271(3)(a) of the Act and made certain observations in its order. The Tribunal had considered the explanation of the assessee on the merits and accepted the bona fides pleaded by the assessee that it was prevented from filing the return in time as it believed that its income did not exceed the maximum amount not chargeable to

tax. Reference to Section 271(3)(a) of the Act by the Tribunal in its order does not affect the main findings of the Tribunal in believing the case of the assessee.

14. For all these reasons, we answer question No. 3 in the affirmative in favour of the assessee and against the Revenue.

15. Now coming to questions Nos. 1 and 2, in our opinion, both these questions are liable to be returned unanswered. So far as question No. 1 is concerned, no such question was raised before the Tribunal and as such it does not arise out of the order of the Tribunal. It is well-settled that, in a reference, only those questions can be answered by the High Court as have been raised before the Tribunal and have been referred by it. Since the controversy involved in question No. 1 was not canvassed before the Tribunal and the question does not arise out of the Tribunal's order, it is returned unanswered. Question No. 2, in our opinion, also deserved to be returned unanswered in view of our answer to question No. 3. For all practical purposes, question No. 2 has become academic and redundant, inasmuch as, even if we were to answer this question in the negative, it would not advance the case of the Revenue as cancellation of the impugned penalty has been upheld in returning the answer to question No. 3. We, accordingly, return question No. 2 also unanswered. There shall be no order as to costs.