
(2003) 05 KL CK 0036
In the High Court Of Kerala
Case No : Income Tax A. No. 53 of 2000

Commissioner of Income Tax	Vs	APPELLANT
Central Stores		RESPONDENT

Date of Decision : 28-05-2003

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 148, 271(1)

Citation : (2004) 191 CTR 287 : (2004) 269 ITR 241

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon and George K. George, for the Appellant; John Ramesh K.I. John, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan J.

1. The Commissioner of Income Tax, Trivandrum, has filed this appeal against the order of the Income Tax Appellate Tribunal, Cochin Bench, in I. T. A. No. 737/ Cochin of 1995, dated December 20, 1999, affirming the order of the Commissioner of Income Tax (Appeals), sustaining the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961, for short "the Act".

2. While admitting the appeal, notice was ordered on the following questions of law :

"1. Whether, on the facts and in the circumstances of the case, does Circular No. 451 dated February 17, 1986 (No. 19) (see [1986] 158 ITR 135), relied on by the assessee and the Tribunal contemplate categoric detection of concealment prior to the filing of the return ?

2. Whether, on the facts and in the circumstances of the case, and when the circular speaks of "If the Income Tax Officer has already found material to show that there has been concealment, that would mean the Department has detected

the concealment . . .", the Tribunal is right in the light of the material seized in holding "according to the answer given to question No. 19 of the Central Board of Direct Taxes Circular No. 451 (see [1986] 158 ITR 135, the Assessing Officer had only prima facie belief about the concealment and the concealment had not been detected categorically prior to the filing of the return by the assessee on April 23, 1986" and is not the finding wrong, inconsistent and militating against the circular ?

3. Whether, on the facts and in the circumstances of the case and in view of the knowledge/awareness of the Officer as to the contents of the materials seized including the contents of a slip of paper marked "11" containing details of the adjustments made in the accounts to understate the income while filing the returns, the Tribunal is right in law and fact in holding that concealment had not been detected and accordingly cancelling the penalty ?

4. Whether, on the facts and in the circumstances of the case and in the light of the findings noted at the beginning of the penalty order that documents were seized, such seized documents revealed suppression of income, etc., the knowledge the Officer had about the contents of the slip of paper marked "11" along with the facts of filing of the revised return within two weeks of the seizure and the principles laid down in Commissioner of Income Tax Vs. K. Mahim, , the Tribunal is right in law and facts in cancelling the penalty ?

5. Whether, on the facts and in the circumstances of the case, does not the slip of paper marked "11" seized from the residence of a partner Sri Jacob Kurien containing details of the adjustments made in the accounts to understate the income while filing the returns, satisfy the former limb of the answer to question No. 19, namely, "the Income Tax Officer has already found material to show that there has been concealment, that would mean the Department has detected the concealment" and if the answer to the above question is in the affirmative is not the order of the Tribunal cancelling penalty wrong against law and logic and vitiated ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and facts in cancelling the penalty?"

3. The brief facts necessary for consideration of this case are as follows. For the assessment year 1982-83, the respondent-assessee filed a return under the Act disclosing a total income of Rs. 48,650. The Assessing Officer completed the assessment on August 27, 1982, accepting the said return. Subsequently, there was a search in the premises of the assessee-firm and its partners on April 9, 1986. Within 14 days from the date of the search, that is on April 23, 1986, the assessee filed a revised return of income disclosing a total income of Rs. 1,98,650. Since the assessment for the year 1982-83 was already over, in order to regularise the said return which is beneficial to the Revenue, the Assessing Officer issued a notice u/s 148 of the Act on April 28, 1986. Subsequently, the Assessing Officer completed the assessment u/s 143(3) read with Section 147 of

the Act on October 30, 1987, determining the total income at Rs. 2,00,900. The assessee had subsequently filed appeals before the Commissioner of Income Tax (Appeals) and before the Tribunal against the assessment order, which were dismissed. Later, the Assistant Commissioner of Income Tax, Investigation Circle, Kottayam, issued a notice u/s 274 read with Section 271(1)(c) of the Act stating that concealment of income was found during the course of the assessment proceedings. Rejecting the objections filed by the assessee, the Assessing Officer passed an order imposing penalty u/s 271(1)(c) of the Act on June 26, 1995. In appeal by the assessee, the Commissioner of Income Tax (Appeals)-II, had allowed the appeal cancelling the penalty. This was confirmed by the Tribunal in appeal filed by the Department.

4. Sri P. K. R. Menon, senior Central Government standing counsel for taxes appearing for the appellant, submits that the Officer imposing penalty had entered a clear finding in paragraph 7 of the penalty order that the assessee had concealed the particulars of its income and such concealment was detected by the Department during the course of search and seizure operations, conducted on April 9, 1986, and therefore, the revised return filed on April 23, 1986, cannot be treated as a voluntary return, so as to entitle it to the benefit of the "amnesty scheme". Senior counsel submits that in order to avail of the benefit of the amnesty scheme, the return must be a voluntary return submitted prior to detection by the Department. Senior counsel submitted that neither the first appellate authority nor the Tribunal had entered a clear finding based on materials as to whether the revised return filed by the assessee is voluntary and before detection. Senior counsel took us to the answer to question No. 19 in Circular No. 451 dated February 17, 1986 ([1986] 158 ITR 135, at page 138), and submitted that if the Income Tax Officer has already found material to show that there has been concealment, that would mean the Department has detected the concealment. He explained the position by stating that the expression "already found material" in answer to question No. 19 only means that the material has been seized in the search and from such material, it is subsequently found that there is undisclosed income. Senior counsel took us to the assessment order passed u/s 143(3) read with Section 147 which is produced by the assessee along with a petition to accept documents, as also the penalty order (annexure 1) and submitted that slip No. 11 seized from the residence of the partner, Sri Jacob Kurian, detected in the said orders would clearly show that the Department had detected undisclosed income, and therefore, it has to be held that the revised return was filed after detection by the Department. Senior counsel also submits, the Tribunal had affirmed the order of the first appellate authority cancelling the penalty, mainly on the ground that the officer imposing penalty has stated in paragraph 1 of the penalty order that he was satisfied in the course of the assessment proceedings that there is concealment and therefore it is evident that the revised return filed earlier cannot be treated as one filed after detection. He also pointed out that on the face of the details of slip No. 11 discussed by the Assessing Officer and by the Officer imposing penalty in

their respective orders, the Tribunal was not justified in entering a finding in para. 8 of the appellate order that though a piece of paper marked 11 was seized from the residence of the partner at the time of search, yet it did not specifically establish the concealment. Senior counsel submitted that there is no due consideration of all the relevant matters by the Tribunal, with regard to the entitlement of the benefit of the amnesty scheme on the facts of the case. Senior counsel submitted that since the Assessing Officer and the Officer imposing penalty had entered a categories finding that concealment was detected by the Department during the course of search and seizure operations, both the appellate authorities were not justified in cancelling the penalty. Senior counsel alternatively submitted that the order of the Tribunal has to be set aside, and the matter remitted to the Tribunal for consideration of all the matters.

Learned counsel appearing for the respondent-assessee, on the other hand, submitted that though a search at the business premises of the firm and its partners was made on April 9, 1986, and certain documents were seized, neither the Officer conducting the search nor the Assessing Officer had processed the seized material at any point of time earlier to the filing of the revised return on April 23, 1986, and, therefore, it cannot be said that the Department had detected concealment of income earlier to the filing of the revised return dated April 23, 1986. Counsel submits that the assessee had filed the revised return for the purpose of availing of the benefit of the amnesty scheme declared by the Central Board of Direct Taxes in its various circulars including Circular No. 451 (see [1986] 158 ITR 135), and that as per the said circulars, the assessee who files a revised return prior to the detection of concealment is entitled to avail of the benefit of the amnesty scheme by filing the revised return in which case, there will not be any liability to penalty or prosecution. Counsel further submitted that the assessee had clearly stated in the revised return that it is one filed under the clarification circular issued by the Board and that the first appellate authority in the quantum proceedings has also entered a finding that the revised return filed on April 23, 1986, is one filed under the amnesty scheme. Counsel also submitted that this court in Commissioner of Wealth Tax Vs. N.C.J. John, has clearly held that the benefit of the amnesty scheme under the various circulars issued by the Board cannot be denied solely on the ground that search was conducted in the premises of the assessee. Counsel also relied on another decision of the Division Bench of this court in Commissioner of Income Tax Vs. Hotel Ambassador, , where it was held that an assessee who has filed a revised return under the amnesty scheme prior to the issuance of notice u/s 147 of the Act is entitled to the benefit of the amnesty scheme in respect or the amount disclosed in the revised return. Counsel further submitted that the Tribunal had considered the matter in the light of the provisions of the circular and also keeping in mind the principles laid down by various decisions of this court and that, at any rate, in view of the decision of this court in Commissioner of Income Tax Vs. Hotel Ambassador, , the conclusion reached by the Tribunal has to be sustained.

6. We have considered the rival submissions and have perused the various orders produced along with the paper book and the additional documents filed by the assessee. We have also gone through the decision of this court relied on by the assessee. There is no dispute that there was a search of the business premises of the assessee-firm and the residential premises of its partners on April 9, 1986, and that certain documents had been seized in such search. It is also a fact that the assessment for the year 1982-83 was originally completed on August 27, 1982, and that the assessee had filed a revised return after the search and seizure on April 23, 1986, offering an income of Rs. 1,98,650. It is not also disputed that the reassessment was completed on October 30, 1987, on a total income of Rs. 2,00,900, that is by making an addition of Rs. 2,250 to the income returned in the revised return. From the penalty order (annexure A), it has been stated that the Assessing Officer, in the course of the assessment proceedings had found concealment, and therefore, he had issued a notice u/s 274 read with Section 271(1)(c) of the Act for imposition of penalty. The Officer had referred to slip No. 11 seized in the search and observed that there is clear evidence that the assessee had concealed the income to the extent of Rs. 1,65,500 while filing the original return and that this concealment was detected by the Department during the course of search operations on April 9, 1986. It is in this background that the Officer in the penalty order has stated that the contention of the assessee that the revised return is not one filed under the amnesty scheme. It is on that basis, the Officer had entered a further finding that the assessee had concealed the particulars of its income and such concealment was detected by the Department during the course of search and seizure operations. The first appellate authority, it is seen, had observed that the Commissioner of Income Tax (Appeals) in the quantum appeal had accepted the assessee's contention that the return was filed under the amnesty scheme, and had accordingly cancelled the penalty. However, the Tribunal in the appeal filed by the Department had referred to the detailed contentions of the assessee and the submission made by the Departmental Representative based on the answers to questions Nos. 12 and 19 of the Board's Circular No. 451 dated February 17 1986 (see [1986] 158 ITR 135), and the details of the material found in the seized slip, and ultimately in paragraph 8 of the Tribunal's order, observed as follows :

"8 ... In the penalty order in the first para itself the Assessing Officer has stated that the concealment was detected during the course of assessment proceedings. Though the learned Departmental Representative stated that the Assessing Officer by mistake wrote "assessment proceedings" instead of "search proceedings" in the penalty order (para. 1) yet in substance this means that concealment was actually detected during the course of search proceedings. We are of the opinion that though a piece of paper marked "11" was seized from the residence of the partner at the time of search, yet it did not specifically establish the concealment. We feel that from this paper, the Assessing Officer had only prima facie belief about the concealment but that would not mean that the

concealment had been detected. We, therefore, hold that according to the answer given to question No. 19 of the Central Board of Direct Taxes Circular No. 451 (see [1986] 158 ITR 135), the Assessing Officer had only prima facie belief about the concealment and the concealment had not been detected categorically prior to the filing of the return by the assessee on April 23, 1986. The observation of the Assessing Officer in para. 1 of the penalty order that concealment was detected during the course of the assessment proceedings weakens the case of the Department."

7. It is seen from the above extract that the Tribunal had relied on the fact that the officer imposing penalty has stated in the penalty order that concealment was detected during the course of the assessment proceedings from which it is evident that the return was filed prior to detection. The Tribunal also observed that slip No. 11 seized from the residence of the partners at the time of the search did not specifically establish the concealment and that the Assessing Officer had only prima facie belief about the concealment. But that would not mean that the concealment had been detected. It is in the above circumstances, the Tribunal had entered a finding that the Department had not detected concealment prior to the filing of the revised return, and therefore, the assessee is entitled to the benefit of the amnesty scheme.

8. As already noted, the contention of senior counsel appearing for the applicant is that the Tribunal had only noted the observation made in paragraph 1 of the penalty order, and had omitted to consider the categoric finding rendered in paragraph 7 of the penalty order which is to the effect that the concealment was detected by the Department in the course of the search, which is prior to the filing of the revised return. It is in those circumstances senior counsel submits that the matter has to go before the Tribunal for fresh consideration. We were also having an impression at the first blush that the matter required to be considered by the Tribunal afresh. However, after perusing the judgments of this court mentioned above, we feel that the conclusion reached by the Tribunal has to be sustained, though not on the ground stated by the Tribunal. The Division Bench of this court in Commissioner of Wealth Tax Vs. N.C.J. John, was considering a case of penalty imposed based on a search conducted in the premises of the assessee. The Tribunal had entered a finding in that case that though a search was conducted, no incriminating materials were found in the said search. The Division Bench after adverting to the answer to questions Nos. 12, 19 and 30 in Circular No. 451 [1986] 158 ITR 135, held that the Tribunal had clearly recorded a finding of fact that during the search operations conducted on April 23, 1986, no material was seized leading to detection of any concealment and further observed that if there was no detection of concealment at the time of search, can it be said that the assessee will still be deprived of the benefit of the amnesty scheme. It was thereafter held that "we do not agree with the submission of learned senior standing counsel that the moment a search operation is conducted on anybody's premises, he becomes disentitled to the benefit of the amnesty scheme." The Division Bench made further observation as

follows (page 479) :

"In the case of the instant assessee, the Appellate Tribunal clearly recorded a finding of fact that during the search operation conducted on February 23, 1984, no material was seized leading to detection of any concealment. If there was no detection of concealment at the time of search, can it be said that the assessee will still be deprived of the benefit of the amnesty scheme. We do not agree with the submissions of learned senior standing counsel that the moment a search operation is conducted on anybody's premises he becomes disentitled to the benefit of the amnesty scheme. A search may be conducted on wrong information without detecting any concealment. Moreover, a search may be conducted on a few premises of an assessee and to take advantage of the amnesty scheme, the assessee may declare the income or wealth, which he kept at different premises, which was not detected to by the raiding party at the time of search and from which no concealment was detected. The question will arise whether the doors of the amnesty scheme will be closed in these situations also. A search without detection of any concealment, in our opinion, is of no consequence and, therefore, the assessee should not be deprived of the benefit of the amnesty scheme merely by the factum of search ; but if the raiding party had detected some concealment, then the position would have been different. We are fortified this view by question No. 30 and answer thereto, which are reproduced below (see [1986] 158 ITR 135) :

"Question No. 30.--Whether an assessee could make a declaration in respect of assets or income which is not the subject-matter of seizure ?

Answer. --Yes, if it has not been already found out in the course of the search."

It is patent from question No. 30 and the answer thereto that it is not the search alone which will exclude the assessee from the benefit of the amnesty scheme, but the actual detection of assets or income sought to be declared under the amnesty scheme, could deprive an assessee of the benefit of the scheme.

The amnesty scheme has been introduced for the benefit of the taxpayers as well as for the benefit of the Revenue. The provisions of the scheme should be construed keeping in view its purpose and the context. Rigid and pedantic interpretation of the scheme has to be avoided. Keeping in view the interpretative principle and the answer to question No. 30 as contained in the scheme itself, we are of the considered view that the scheme cannot be construed in a narrower fashion that an assessee will be deprived of its benefit, simply because he was subjected to search, notwithstanding that there was no detection of any concealment. The scheme has to be interpreted rationally. We do not agree with learned senior standing counsel that the scheme is to be interpreted by applying a strait-jacket formula that it excludes the class of assesseees, who were subjected to a search operation. If the scheme is interpreted in the manner which is canvassed by the Revenue before us, then it would not only give rise to an anomalous position, but absurd results, causing

great injustice to the assessee and considerable loss of revenue to the Department.

No concealment having been detected during the search operation conducted on the premises of the assessee, we agree with the Appellate Tribunal that the assessee was entitled to the benefit of the amnesty scheme for the consecutive assessment years 1982-83 to 1984-85."

9. According to us, the decision of this court in Commissioner of Income Tax Vs. Hotel Ambassador, clinches the issue involved in this case. In that case, while the assessments for the years 1981-82 and 1982-83 were pending, there was a search in the premises of the assessee, and the assessee filed two revised returns before the issue of a notice u/s 147 of the Act. The assessments for the said years were completed by the Assessing Officer on a larger sum than what was originally returned and subsequently offered in the revised returns. In penalty proceedings, it was contended that since the assessee had filed revised returns for the years 1981-82 and 1982-83 prior to the issuance of a notice u/s 147, the assessee is entitled to the benefit of the amnesty scheme, and consequently the imposition of penalty is without jurisdiction. The Assessing Officer did not accept the said contention and had imposed penalty. However, this was set aside in appeal by the Commissioner of Income Tax (Appeals) and confirmed by the Tribunal. This court however did not sustain the order of the Tribunal in holding that the assessee is entitled to immunity under the amnesty scheme. However, the Division Bench observed as follows (page 440) :

"However, we feel that for the assessment years 1981-82 and 1982-83, the assessee had filed the revised returns on September 30, 1986, disclosing the additional income. This was done before notice u/s 147 was issued on January 13, 1987, for these two years. We feel that the additional amounts offered under these two revised returns filed on September 30, 1986, are entitled to immunity under the amnesty scheme under Circular No. 453, dated 4th April, 1986 (see [1986] 159 ITR 9)."

10. It was further observed as follows (page 440) :

"But we make it clear that the income assessed over and above the income originally assessed and returned on September 30, 1986, is concealed income on which penalty is payable u/s 271(1)(c) of the Income Tax Act. It is a fact that the assessee has not made true and full disclosure even for these two years also. However, we feel that at least to the extent of income voluntarily disclosed by the assessee, the assessee should get immunity from penalty. Therefore, penalty for 1981-82 and 1982-83 has to be recomputed after excluding from the concealed income originally fixed, the income additionally offered by the assessee vide its revised returns filed on September 30, 1986."

11. From the aforesaid position, it is evident that this court has taken a view that if a revised return offering a higher amount is filed after the search and seizure, but prior to the issuance of notice u/s 147, the return must be treated as

voluntary and one filed before detection in respect of the amount offered in the said revised return.

12. In the present case, as already noted, the assessee had filed the original return disclosing a total income of Rs. 48,650 and after search, the assessee had filed a revised return showing a total income of Rs. 1,98,650, which would show that the assessee had offered an additional income of Rs. 1,50,000. The Assessing Officer has completed the assessment on a sum of Rs. 2,00,900, which shows that over and above the amount offered in the revised return, the Assessing Officer has made a further addition of Rs. 2,250. Applying the ratio of the decision in Commissioner of Income Tax Vs. Hotel Ambassador, , the assessee is entitled to immunity under the amnesty scheme in respect of a sum of Rs. 1,98,650 (Rs. 48,650 originally offered + Rs. 1,50,000 additionally offered in the revised return), and the amount that can be subjected to penalty u/s 271(1)(c) is Rs. 2,250. This is for the reason that admittedly a notice u/s 147 was issued only subsequent to the filing of the revised return and for the purpose of regularising the said revised return. In these circumstances, though we are not fully agreeing with the reasoning of the Tribunal, we are in full agreement with the conclusion reached by the Tribunal. We accordingly, answer the questions in favour of the assessee and against the Revenue.

13. The appeal is accordingly dismissed.