
(1978) 09 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Income Tax Case No. 87 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Chandi Prasad Khetan

RESPONDENT

Date of Decision : 25-09-1978

Acts Referred:

Income Tax Act, 1922 — Section 34

Income Tax Act, 1961 — Section 256(2), 271(1), 274, 274(2)

Citation : (1979) 120 ITR 314

Hon'ble Judges : M.L. Joshi, Acting C.J.; M.C. Jain, J

Bench : Division Bench

Advocate : L.R. Mehta, for the Appellant;

Judgement

M.L. Joshi, Actg. C.J.

1. By this application u/s 256(2) of the I.T. Act, 1961, hereinafter referred to as the Act, the Commissioner of Income Tax, Rajasthan, prays that the Tribunal be directed to state the case and refer to this court the following question, which according to the CIT is a question of law arising out of the order of the Tribunal :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty imposed by the IAC u/s 271(1)(c) read with Section 274 of the I.T. Act, 1961 ? "

2. The relevant facts which need to be noticed for disposing of this application may be stated as follows :

3. The Income Tax Officer, hereinafter called the ITO, after giving notice u/s 34 of the Indian I T. Act, 1922, made two additions of Rs. 1,00,000 and Rs. 75,000 in the income of the assessee, Shri Chandi Prasad, for the assessment year 1947-48, These additions were ultimately upheld by the Tribunal by its order dated February 25, 1972, whereby the Tribunal dismissed the second appeal of the assessee.

4. The Inspecting Assistant Commissioner, hereinafter called the IAC of Income Tax, Bikaner Range, Bikaner, by his order dated August 24, 1972, imposed a penalty of Rs. 24,463 on the assessee u/s 271(1)(c) read with Section 274(2) of the Act (of 1961) for concealment of income to the tune of Rs. 1,75,000. The IAC gave a number of reasons in his order for holding Rs. 1,75,000 as undisclosed income of the assessee. According to the IAC, the assessee concealed his income in the return filed by him in response to a notice u/s 34 of the Indian I.T. Act, 1922, The IAC, so far as Rs. 1,00,000 was concerned, observed that the assessee in the first instance denied to have any bank account in Delhi or any transaction with Shri P. C. Poddar but later on came out to state that he had a bank account in Delhi and had also received Rs. 1,00,000 by telegraphic transfer from Shri P.C. Poddar. No evidence to this effect was placed by Shri P.C. Poddar. His version was that the amount was sent to the assessee to accommodate him while according to the assessee he needed no money. The IAC has further observed that Shri Poddar had given certain details of withdrawals of substantial amounts from the bank account of M/s. Sewaram Kaluram and the despatch of a part of such funds to the firm of the assessee. But he was unable to produce any evidence that an amount of Rs. 1,00,000 was sent to the assessee by T.T. from Calcutta. It has been further pointed out by the IAC that Shri P. C. Poddar had not been able to prove his capacity to advance the money to the assessee. The IAC has also pointed out that there is no evidence on record to show that Shri P. C. Poddar had remitted the amount to the assessee. The IAC also discarded the contention of the assessee that as Rs. 1,00,000 had been added in the assessment order of M/s. Sewaram Kaluram, the HUF represented by Shri P. C. Poddar, the same amount could not be added in his income. On these reasons and in the absence of books of accounts of Shri P. C. Poddar, HUF, he also did not accept the contention of the assessee that Shri P. C. Poddar withdrew Rs. 1,20,000 on November 8, 1946, and this amount was really utilised for the purchase of bank draft of the Punjab National Bank, Calcutta, in favour of the assessee. The IAC also noticed that there was no explanation as to where the money remained from November 8, 1946, to January 13, 1947. On these facts the IAC held that the income of Rs. 1,00,000 was undisclosed income of the assessee. Likewise, in regard to Rs. 75,000, the IAC discarded the version of the assessee, principally on the ground that the version of the assessee that the gold was converted into money by melting it was not at all credible as in view of grave discrepancy in the version given in that behalf. After taking into account all the circumstances the IAC ultimately came to hold that Rs. 1,00,000 and Rs. 75,000 represented income from undisclosed sources earned in Part A State and, therefore, the IAC imposed a penalty.

5. On appeal by the assessee against the order of penalty the Tribunal by its order dated January 14, 1975, cancelled the penalty by allowing the appeal of the assessee. The Tribunal held that the department had not discharged the onus which lay upon it to prove the case that the two sums of Rs. 1,00,000 and Rs. 75,000 represented the assessee's income. In the opinion of the Tribunal the

additions have been made in the assessment year in respect of these items on the ground that the explanation of the assessee was false. The Tribunal, therefore, held that merely adding these amounts in the income of the assessee as from undisclosed sources for want of satisfactory explanation is not correct, and so the Tribunal cancelled the penalty.

6. Being aggrieved by the order of the Tribunal dated January 14, 1975, cancelling the penalty, the CIT filed a reference application u/s 256(2) of the Act and has prayed us to require the Tribunal to state the case and refer the question of law mentioned above to this court.

7. From the order of the Tribunal, it will appear that the Tribunal has cancelled the penalty on the sole ground that the falsity of the explanation given by the assessee in respect of the two items of Rs. 1,00,000 and Rs. 75,000 found entered in his bank account is not at all sufficient for the imposition of penalty for concealment of the income. In this regard, the Tribunal has placed reliance on a decision in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali,

8. Mr. Mehta, learned counsel for the department, has raised the following contentions before us :

9. Firstly, that the Tribunal while cancelling the penalty imposed by the IAC did not take into account the order of the Tribunal dated February 25, 1972, passed in quantum appeal, whereby it affirmed the order of the ITO adding Rs. 1,75,000, In that order, the Tribunal had arrived at a firm finding that the amount aggregating to Rs. 1,75,000 represented the undisclosed income of the assessee. Mr. Mehta urged that the Tribunal has not at all taken into consideration this material piece of evidence and has erred in saying that there was no evidence on the record for holding that the income of Rs. 1,75,000 was undisclosed income of the assessee.

10. Secondly, that the IAC had pointed out cogent circumstances and. has given detailed reasons in holding that a sum of Rs. 1,75,000 represented undisclosed income of the assessee. In this connection, he has relied upon a decision of the Supreme Court in CIT v. Indian Woollen Textile Mills [1954] 51 ITR 291 JAIPUR METALS AND ELECTRICALS LTD Vs. COMMISSIONER OF Income Tax AND OTHERS., and Commissioner of Income Tax Vs. Smt. Satnam Malik,

11. Taking up the first contention, we may at once say that the Tribunal did not take into account the order of the Tribunal dated February 25, 1972, passed in the quantum appeal, wherein the Tribunal held that the amount of Rs. 1,75,000 represented the undisclosed income of the assessee. Undoubtedly, the Tribunal's order is a material piece of evidence as held in Commissioner of Income Tax, Punjab Vs. Indian Woollen Textile Mills, JAIPUR METALS AND ELECTRICALS LTD Vs. COMMISSIONER OF Income Tax AND OTHERS., and Commissioner of Income Tax Vs. Smt. Satnam Malik, In all these cases, it has been categorically held that the order of the Tribunal, in quantum appeal, is a very good piece of evidence,

though not conclusive. The Tribunal, therefore, obviously erred in saying that there was no evidence worth the name for warranting the imposition of penalty. In view of the evidence in the form of the Tribunal's order and any evidence to the contrary in favour of the assessee, there is no reason to hold that there was no evidence for warranting the imposition of penalty by the IAC. Furthermore, there were enough circumstances and facts pointed out in the order of imposition of penalty which have not been taken into account by the Tribunal. We deem it proper here to make a special reference to Commissioner of Income Tax, Punjab Vs. Indian Woollen Textile Mills, wherein it has been held that if there is some evidence to support the finding of the Income Tax authority, then the Tribunal is bound to consider it. We are, therefore, of the opinion that the conclusion of the Tribunal suffers from an infirmity as it ignores the relevant matters and good evidence. The order of the Tribunal will be taken to have been vitiated in the eye of law. As stated earlier, the Tribunal has not taken into consideration the order of the Tribunal passed in quantum appeal. Therefore, its order suffers from the infirmity of not considering the material and good piece of evidence so far as the additions of Rs. 1,00,000 and Rs. 75,000 were concerned.

12. We now proceed to take up the second contention advanced on behalf of the CIT. The IAC had given detailed reasons and pointed out the circumstances for treating Rs. 1,75,000 as undisclosed income of the petitioner as stated in the earlier portion of the judgment. The Income Tax Appellate Tribunal, however, did not consider those reasons and circumstances pointed out by the IAC. The Tribunal has, therefore, misdirected itself in law in arriving at its finding and in refusing to state the case and to refer it to the High Court.

13. We, therefore, direct the Tribunal to state the case and refer the following question of law to this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty imposed by the IAC u/s 271(1)(c) read with Section 274 of the Income Tax Act, 1961 ? "