

(1977) 02 GAU CK 0002

In the Gauhati High Court

Case No : Income-tax Reference No. 37 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Das Brothers

RESPONDENT

Date of Decision : 04-02-1977

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1977) 02 GAU CK 0002

Hon'ble Judges : M.C. Pathak, C.J.;N. Ibotombi Singh, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukdar, for the Appellant; P. Choudhuri and M.L. Barjatya, for the Respondent

Judgement

Pathak, C.J.—The following question of law has been referred to the High Court for decision by the Income Tax Appellate Tribunal, Gauhati Bench, u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act" :

"Whether, on the facts and circumstances of the case, the Tribunal was right in cancelling the penalty levied u/s 271(l)(c) of the Income Tax Act, 1961, for the assessment year 1968-69 ?"

2. The assessee is a firm carrying on business in bins and some other articles. For the assessment year 1968-69 it filed a return showing an income of Rs. 38,200. The return was accompanied by a copy of the trading account, profit and loss account and the balance-sheet. During the course of examination of books of account the Income Tax Officer noticed some defects in the account books. The attention of the assessee was drawn to the defects by a letter dated August 14, 1969, and it was asked to explain the various points regarding the defects. On September 22, 1969, the assessee filed a revised return showing an enhanced income of Rs. 46,992 and on the same date it also submitted a letter to the Income Tax Officer explaining how the mistakes in the account came into existence.

3. The Income Tax Officer completed the assessment after making the following additions :

- (1) Rs. 10,000 on account of under-statement of sales in bin account.
- (2) Rs. 14,000 on account of commission of sales in biri account.
- (3) Rs. 500 on account of difference in the figures of sales as per books and as per the statement.
- (4) Rs. 6,500 on account of under-statement of sales in 7% finance goods account.

4. After making some other additions the total income of the assessee was computed at Rs. 77,590.

5. The Income Tax Officer initiated penalty proceedings and referred the matter to the Inspecting Assistant Commissioner of Income Tax as the minimum penalty leviable exceeded Rs. 1,000. Accordingly, notice was issued to the assessee by the Inspecting-Assistant Commissioner asking the assessee to show cause why penalty for concealment of income should not be levied. The Inspecting Assistant Commissioner in the penalty proceedings held that the assessee had concealed substantial amounts of its income and, therefore, he levied a penalty of Rs. 50,000 u/s 271(1)(c) of the Act.

6. Against the penalty order passed by the Inspecting Assistant Commissioner the assessee appealed to the Income Tax Appellate Tribunal. The Tribunal cancelled the penalty order and allowed the appeal.

7. On the above facts briefly stated the above mentioned question of law has been referred.

8. From the statement of the case as well as from the order of the Tribunal we find that the Tribunal considered the four items of additions made by the Income Tax Officer for the purpose of considering whether the penalty levied in the instant case was sustainable in law or not. As the facts stand, it is not disputed by the assessee that this case attracts the Explanation to Section 271(1)(c) of the Act and the Tribunal approached the case on that basis holding that the burden lay on the assessee to prove that the failure to return the correct income did not arise out of any fraud or gross or wilful negligence on the part of the assessee.

9. Regarding the addition of Rs. 10,000 in the biri account the Tribunal, after considering the materials on record, has observed as follows:

"We may keep in our mind that the assessee has been asked to prove here something negative that it had not committed fraud. This burden would fall lightly on it depending upon facts and circumstances leading to the alleged concealment. Here, the facts are understatement of sales by Rs. 10,000. The assessee's plea is clerical error. We are inclined to accept this reasoning. We

note that the assessee had turnover of nearly Rs. 40 lakhs and it is likely that clerical mistakes had taken place. Once a mistake takes place reducing the sales, it affects in reduction of profits and so it would not appear in the balance-sheet."

10. It is thus found that the Tribunal on the materials on record has come to the conclusion that the omission of Rs. 10,000 in the biri account is a clerical mistake and, therefore, not a deliberate or wilful mistake.

11. About the second item, that is, enhancement of income of Rs. 14,000 in the biri account, the Tribunal after considering the materials on record has observed as follows:

"There has been certain mistakes. The Income Tax Officer has treated it, not as under-valuation of closing stock, but as suppression of sales. The satisfaction derived by the Income Tax Officer is that the assessee had concealed income. But, as rightly pointed out by the assessee's counsel, it is only a presumption that the goods have been sold. Now, the concealment of sale would be concealment of income but under-valuation of closing stock would be furnishing of inaccurate particulars of income."

12. The Tribunal on this point finds that the penalty has been levied for concealment of income but the second item of charge is regarding furnishing of inaccurate particulars of income and on that ground penalty is not sustainable on this charge. The Tribunal has observed that there is no evidence for suppression of sales and there is prima facie only under-valuation of closing stock but the Income Tax Officer has gone by suppression of sales for which there is no evidence. The Tribunal has further observed that there was no intentional under-valuation of closing stock. Ultimately, the Tribunal after reviewing the materials on record has observed:

"We will, therefore, hold that the assessee cannot be held as grossly negligent or has been wilfully negligent."

13. That being the position, the Tribunal has found that the assessee has been able to discharge the burden cast upon it under the Explanation to Section 271(1)(c) of the Act.

14. Thus, the Explanation is not applicable in the facts and circumstances of the case. So it will be the burden of the department to prove that there was concealment of the particulars of income or that the assessee furnished inaccurate particulars of such income deliberately. To this effect there is no material from the side of the department and the Tribunal also has found that the department has not been able to establish this aspect of the matter.

15. In the result, we find that the Tribunal, on the facts and circumstances of the case, was right in cancelling the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961, for the assessment year 1968-69.

16. The question of law referred is answered in the affirmative and against the

department.

17. The reference is accordingly disposed of. There will be no order as to costs.

N. Ibotombi Singh, J.

18. I agree.