
(1980) 09 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No"s. 51 to 55 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Dwarkadas Moolchand

RESPONDENT

Date of Decision : 23-09-1980

Acts Referred:

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

Citation : (1980) 09 MP CK 0018

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : Bagadiya, for the Appellant; A.K. Chitaley, for the Respondent

Judgement

Shukla, J.—This order shall also govern the disposal of Miscellaneous Civil Case No. 52 of 1979 (CIT v. Dwarkadas Moolchand), Miscellaneous Civil Case No. 53 of 1979 (CIT v. Radheshyam Dwarkadas), Miscellaneous Civil Case No. 54 of 1979 (CIT v. Master Arjun Bhojraj) and Miscellaneous Civil Case No. 55 of 1979 (CIT v. Master Sunil Bhojraj), as in all these cases the question referred to us is common and the facts also, with slight variation, are similar.

2. The question referred to us by the Income Tax Appellate Tribunal, Indore Bench, Indore, is as follows :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee had reasonable cause for the late filing of the return and, consequently, in maintaining the order of cancellation of the penalty of Rs. 1,009 levied u/s 271(1)(a) of the Income Tax Act ? "

3. In the connected cases the amounts of penalties levied by the ITO and cancelled by the AAC and the Appellate Tribunal are different but this will not affect the answer to the question referred to us for opinion.

4. Facts in this case as stated by the Tribunal may be stated and taken as

illustrative applying to the other connected cases as well. The assessment year in question was 1972-73, for which the return of income was due on July 31, 1972. It was, however, filed on September 30, 1972. Since there was a delay of about two months, a penalty of Rs. 1,009 was levied u/s 271(1)(a) of the Act by the ITO.

5. When the matter was carried before the AAC. in appeal, it was submitted that the assessee's main source of income was share income from the firm, M/s. Dwarkadas Moolchand, Indore. The accounts of the firm had not been finalised on or before the due date for filing the return and the firm itself had filed its return late. It was urged that as the accounts of the firm were not finalised, the assessee was unable to know his share of income and, therefore, there was a reasonable cause for filing the return late by two months, i. e., on September 30, 1972. The AAC observed that the appellant had a reasonable cause till September 30, 1972, i. e., the date on which the firm's return was filed. He relied on the decision of the Orissa High Court in Commissioner of Income Tax Vs. Baijnath Chopolia, .

6. The department appealed against the AAC's order. The Appellate Tribunal observed as follows :

"Since the department has not furnished any fresh material to show that the return of the firm had been finalised or that the appellant had known his share of income before hand or that he had any income other than his share in the firm, we are not inclined to interfere in this appeal."

7. The Appellate Tribunal, besides Commissioner of Income Tax Vs. Baijnath Chopolia, , referred to Venkateswara Power Rolling Mills and Another Vs. Commissioner of Income Tax, .

8. In the connected cases (M.C.Cs. Nos. 52 to 55 of 1979), there was one additional circumstance. The assessees in those cases had applied for extension of time for filing the return on the ground that the accounts of the firm of which they were partners had not been completed and, therefore, they were unable to ascertain their income and file the return in time.

9. The facts stated by the Tribunal clearly indicate that the Tribunal had recorded a finding of fact in all the above cases to the effect that, there was reasonable cause on the part of the assessees for the late filing of the returns inasmuch as they could not ascertain their share of income in the firm unless the accounts of the firm were completed and its income finalised. In fact on this finding of fact no question of law could arise and the cases need not have been referred at all. However, the Appellate Tribunal felt that its attention was not invited to some decisions in which the Madhya Pradesh High Court is said to have taken a contrary view and, therefore, it persuaded itself to refer the question for our opinion u/s 256(1) of the Act. Though in our opinion no question of law arose out of the orders of the Tribunal, we will refer to the two decisions of this High Court which led the Tribunal to hold that a question of law had arisen and to refer the

case to us.

10. The two decisions of this High Court to which reference has been made by the learned counsel for the revenue and which have been referred to in the reference orders of the Appellate Tribunal are Ramlal Agarwal v. CIT (M.C.C. No. 728 of 1972 (see p. 342 supra) and Ramnarain Agarwal v. CIT (M.C.C. No. 729 of 1972) dated 2nd May, 1978 (see p. 347 supra). Perusal of the order of the Commissioner passed in these cases clearly shows that the question which the court decided was not the one which is before us but a totally different one. In fact, in para. 8 of the order the court had held that whether the failure to furnish a return within the prescribed time was without reasonable cause or not was purely a question of fact and no principle of law was applicable in answering this question. We may reproduce the relevant portion (p. 345 supra).

" If it is held by these authorities that such failure was for reasonable cause, then no question of imposition of penalty would arise. However, the question whether such failure was without reasonable cause or not, is essentially one of fact, which it is for the departmental authorities to decide. Unless the decision of this question requires the application of any principle of law, the same would remain a question of fact. On the facts and in the circumstances of this case, no principle of law required application for deciding whether the assessee's failure to furnish the return was "without reasonable cause" or not. Accordingly, this was a pure question of fact and the finding thereon cannot, therefore, be examined by this court since, this not being a question of law, could not be refened in the present case to this court for a decision. This is our answer to question Nos. (1) and (5)."

11. The High Court in the cited case confined its answer to question No. (2) which in essence was to the effect whether the partner of a firm is not liable for penalty u/s 271(1)(a) of the Act ii the firm of which he is a partner has also been penalised for the default of late filing of the return. The contention on behalf of the department on this question before the High Court was that penalty can be levied u/s 271(1)(a) on the assessee, a partner of the firm, even though a penalty under this very provision had also been levied on the firm. This question was answered by the High Court on the basis of its decision in Amritlal Somabhai Vs. Commissioner of Income Tax, . In that case, the court had repelled the contention of the assessee that the imposition of penalty u/s 271(1)(a) of the Act on the firm and also on the partner for the same default amounted to double punishment.

12. Since, in our opinion, the Appellate Tribunal had held that there was reasonable cause for the assessee for the late filing of his return inasmuch as the assessee was unable to ascertain his income till such time as the accounts of the firm of which he was a partner were finalised, no question of law arises and we decline to answer the question.

13. There shall be no order as to costs.