
(1980) 11 AP CK 0003

In the Andhra Pradesh High Court

Case No : Miscellaneous Civil Case No. 72 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Indore Samachar

RESPONDENT

Date of Decision : 03-11-1980

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1983) 139 ITR 266

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Appellant; G.K. Puranik, for the Respondent

Judgement

Sohani, J.—By this reference under s. 256(1) of the I.T. Act, 1961, hereinafter called "the Act, the I.T. appellate Tribunal, Indore Bench, has referred to the following questions of law to this court for its opinion :

"1. Whether, on the facts, and circumstances of the case, the Tribunal was justified in upholding the levy of penalty for concealment of income on all the four heads ?

2. Whether, on the facts, and circumstances of the case, the Tribunal was justified in applying the Explanation to s. 271(1)(c) of the Income Tax Act, 1961, when the ITO had not specifically invoked the Explanation ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the provisions of s. 271(1)(c) as amended from April 1, 1968, in respect of quantum of penalty, are not applicable to the case where the original return was filed before, April 1, 1967, although a revised return was filed after March 31, 1968 and the concealment existed in both the returns ?"

2. The material facts giving rise to this reference briefly are as follows : The assessee derives income by running a printing press. The return of income was

filed on November 18, 1967, disclosing an income of Rs. 24,600. A revised return was filed on March 20, 1972, showing an income of Rs. 35,483. This revised return was filed to correct a typing error. The amount of depreciation to be added back was wrongly typed in the original return as Rs. 11,814 instead of Rs. 22,796. In all other respects, the revised return was the same as the original return. While framing the assessment the ITO held that income to the extent of Rs. 23,168 was concealed by the assessee and, hence, that amount was added to the income of the assessee. The ITO also commenced penalty proceedings and levied a penalty of Rs. 23,168. On appeal, the ACC reduced the amount of penalty to Rs. 15,472. The assessee then preferred an appeal before the Tribunal. The Tribunal held that income was concealed as held by the AAC and penalty was therefore, leviable. The Tribunal, however, accepted the assessee's contention that since the original return was filed on November 18, 1967, the law applicable would be that which was in force on April 1, 1966, and that, the amended provisions of s. 271(1)(C) of the Act, which came into force on April 1, 1968, were not attracted. The Tribunal, therefore, directed that the quantum of penalty be recomputed in accordance with the provisions of s. 271(1)(C) of the Act, as they stood on November 18, 1967. Aggrieved by the order passed by the Tribunal the assessee as well as the department made applications for making a reference to this court. The first two questions have been referred by the Tribunal at the instance of the assessee, and the third question has been referred by the Tribunal at the instance of the Department.

3. So far as the second question is concerned, that question does not, in our opinion arise out of the order of the Tribunal. From the order passed by the Tribunal it is clear that the question of the applicability of the Explanation to s. 271(1)(c) of the Act, was not pressed before the Tribunal. Under the circumstances, that question cannot be said to arise out of the order passed by the Tribunal. We, therefore, decline to answer that question.

4. Now, so far as the first question is concerned, the Tribunal had material before it on the basis of which it came to the conclusion that there was a concealment of income by the assessee. This is a finding of fact. Learned counsel for the assessee referred to a decision in *Dayabhai and Co. Vs. Commissioner of Income Tax*, and contended that Dayabhai Motor Service was in existence and was not a fictitious concern, the decision in *Dayabhai and Co. Vs. Commissioner of Income Tax*, . However, refers to the registration of the assessee in the assessment year 1956-57 and that decision cannot be pressed into service for holding that the said concern was in existence and that payment was made to that concern by the assessee in the assessment year in question, as alleged by the assessee. There was material before the Tribunal for holding that income was concealed by the assessee and hence, our answer to the first question referred to us is in the affirmative and against the assessee.

5. As regards the third question, the Tribunal found that the concealment had taken place when the original return was filed. There is no material on record to

indicate that the penalty proceedings were commenced against the assessee for a concealment of income in the revised return filed by the assessee on March 20, 1972, under the circumstances, the Tribunal was justified in holding that the provisions of s. 271(1)(c) of the Act, as amended from April 1, 1968, were not attracted. Our answer to the third question is, therefore, in the affirmative and against the Department.

6. The reference is answered accordingly.

7. In the circumstances of the case, parties shall bear their own costs of this reference.