
(1998) 07 MP CK 0013
In the Madhya Pradesh High Court
Case No : M.C.C. No. 464 of 1984

Commissioner of Income Tax

APPELLANT

Vs

K.N. Singh

RESPONDENT

Date of Decision : 06-07-1998

Acts Referred:

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

Citation : (1998) 150 CTR 448 : (2001) 247 ITR 432 : (2000) 109 TAXMAN 477

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : V.K. Tankha, for the Appellant; None, for the Respondent

Judgement

A. K. Mathur, C. J.

1. This is a reference called for by this court on an application made by the Revenue for calling for the statement of the case from the Tribunal on the following question of law :

"Whether, on the facts and in the circumstances of the case and in view of the provisions contained in Section 271(l)(c) of the Income Tax Act, 1961, read with the Explanation thereto, the Tribunal was justified in law in setting aside the penalties of Rs. 50,000 and Rs. 30,000 for the assessment years 1973-74 and 1974-75, respectively, levied by the Inspecting Assistant Commissioner thereunder ?"

2. The brief facts giving rise to this reference are that the assessee was a country liquor contractor. He had also a ganja bhang shop at Pandwadi. A return of income for the assessment year 1973-74 was filed declaring an income of Rs. 29,470 and for the assessment year 1974-75, a return of income was filed declaring an income of Rs. 61,360. However, no books of account or any other materials were placed by the assessee before the Income Tax Officer as none was maintained. Returns of income were, however, filed on the basis of entries in exhibit P-5 register maintained by the Excise Department. During the course of

assessment, the Income Tax Officer found that exhibit P-5 certificate filed by the assessee was incorrect. He obtained the record from the Excise Department and found that the certificate filed by the assessee appeared to be incorrect and it was forged. However, the Income Tax Officer did not place any reliance on the certificate exhibit P-5 filed by the assessee and estimated the assessable income by taking the sales at two and half times the licence fee paid and applied a net profit rate of 15 per cent thereon. On this basis, he worked out the assessee's income for the assessment year 1973-74 at Rs. 89,680 and for the assessment year 1974-75 at Rs. 1,26,900 and also initiated penalty proceedings u/s 271(1)(c) for both the assessment years.

3. Aggrieved by the assessment order passed by the Income Tax Officer, an appeal was preferred before the Appellate Assistant Commissioner. The assessee obtained reliefs of Rs. 18,925 and Rs. 24,550 respectively. The total income of the assessee was reduced to Rs. 71,725 for the assessment year 1973-74 and Rs. 88,400 for the assessment year 1974-75 on second appeal before the Income Tax Appellate Tribunal. The Inspecting Assistant Commissioner took up the penalty proceedings and fixed a date for hearing of the assessee. No one appeared on the appointed date. Thereafter, the Inspecting Assistant Commissioner of Income Tax finalised the penalty proceedings on the basis of materials on record. He found that the income declared by the assessee was very low and there was no cogent explanation for the same. He held that the assessee deliberately attempted to conceal his income and furnished false particulars thereof by filing false certificate exhibit P-5. He rejected the explanation of the assessee tendered at the time of assessment proceedings that exhibit P-5 certificate filed along with the return of income was obtained by one of his employees. It was held that the assessee was guilty of concealing his income and furnishing inaccurate particulars thereof for the two assessment years in question and imposed penalties of Rs. 50,000 and Rs. 30,000 for the assessment years 1973-74 and 1974-75, respectively.

4. Aggrieved by the aforesaid order of penalty, the matter was taken up before the Tribunal. The Tribunal after examining the matter came to the conclusion that though the explanation given by the assessee was not accepted by the Income Tax Officer, however, at the same time, the Income Tax Officer did not conclude the total income of the assessee on the basis of a certificate obtained by him from the Excise Department and he had assessed the income on the basis of the sales and record of the Excise Department. Therefore, it was found by the Tribunal that on the basis of the facts, it cannot be said that there was fraud or gross or wilful neglect on the part of the assessee in disclosing his total income in the returns of income ; and accordingly, the Tribunal set aside the levy of penalties.

5. An application was made before the Tribunal by the Revenue for referring the case to the High Court on the aforesaid question of law. That application was rejected and ultimately the Revenue approached this court u/s 256(2) of the Act

for calling for a statement of the case. This court called for a statement of the case from the Tribunal on the aforesaid question of law.

6. The assessee has not appeared despite the substituted service. We have heard learned counsel for the Revenue and perused the record. It is an admitted fact that the assessee filed a return on the basis of the so-called fraudulent certificate exhibit P-5 and deliberately gave wrong facts of total income of Rs. 29,470 and Rs. 61,360 for both the assessment years 1973-74 and 1974-75, respectively. When the Income Tax Officer got suspicious about the low returns filed by the assessee, he summoned the record from the Excise Department and even examined the Excise Inspector, Shri Bhadoriya, under whose signature the certificate exhibit P-5 was said to have been issued. Shri Bhadoriya deposed before the Income Tax Officer that no such certificate was issued and the signature on the said certificate was forged. The Income Tax Officer therefore did not accept the said certificate exhibit P-5 and found that the assessee had placed a forged certificate and given wrong income for both the assessment years. On a detailed examination of the matter, the Income Tax Officer estimated the income of the assessee by taking the sales at two and half times the licence fee. He also applied net profit at 15 per cent., though on appeal it was reduced by the Tribunal at 8 per cent. Be that as it may, the fact remains that the assessee had deliberately concealed the true income and thereby exposed itself to levy of penalty u/s 271(1)(c) of the Income Tax Act which clearly contemplates that if the Assessing Officer is satisfied that any person has concealed the particulars of income or furnished inaccurate income, then he can be subjected to penalty. In the present case, from the facts it appears that the assessee had deliberately concealed the particulars of income and had filed a forged certificate exhibit P-5 in order to show his income less than what it ought to have been.

7. The explanation given by the assessee that some of his employees obtained the certificate and filed it before the Income Tax Officer has not found favour with the authorities and rightly so. The reasoning given by the Tribunal is that since the Department has not acted upon the inaccurate returns filed, the assessee is exonerated from the levy of penalty. This reasoning of the Tribunal appears to us to be erroneous on the simple ground that so far as the assessee is concerned, he had filed a return on the basis of a forged certificate, exhibit P-5. Simply because the Department was vigilant and it summoned the original record of the Excise Department and determined the correct income of the assessee, the assessee cannot escape the fact of deliberate attempt to mislead the Department. Mens rea on his part is complete when he concealed the true income and gave a false income and tried to mislead the Department by filing the forged certificate exhibit P-5. We are, therefore, satisfied that the levy of penalty in the present case is fully justified and the view taken by the Tribunal on the face of it is erroneous.

8. Hence, we answer the question in favour of the Revenue and against the assessee.