
(1979) 02 MAD CK 0024

In the Madras High Court

Case No : Tax Case No. 99 of 1975 (Reference No. 82 of 1975)

Commissioner of Income Tax

APPELLANT

Vs

Krishna and Co.

RESPONDENT

Date of Decision : 08-02-1979

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1979) 120 ITR 144

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : A.N. Rangaswamy and Nalini Chidambaram, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Sethuraman, J.—In pursuance of the directions of this court u/s 256(2), the following questions have been referred :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the penalty of Rs. 5,800 levied

u/s 271(1)(c) of the Income Tax, Act, 1961 ? and

2. Whether the conclusion of the Appellate Tribunal is a reasonable view to take on the facts and in the circumstances of the case ?

2. In the accounts of the assessee in the previous assessment year 1965-66 there were certain amounts shown as borrowed from four parties :

Rs.

Seth Pahlarai Govindarai, Madras 15,000

Seth Kanyalal Pahlarai, Madras 10,000

Seth Hargovindsing Nihalsing, Madras 10,000

Seth Dwarkadas Lakshmichand, Madras 10,000

45,000

3. A scrutiny of the entries regarding the borrowings and repayments showed certain discrepancies. Though the addresses of all those bankers

were shown to be in Madras, the credits as well as the debits appeared in the books in Tuticorin on the same day. They were claimed to have

been borrowed or repaid in Madras on the same day. The ITO went into the source of these credits. The assessee produced the discharged

hundis. The ITO considered that the bankers had merely lent their names in what was known as ""bogus hawala transactions"". The assessee was

informed of the proposal to treat the amount as income, and the assessee ""readily agreed"" to the assessment of the peak credit and the interest

thereon. A sum of Rs. 47,700 was accordingly added in the assessment. There was no appeal against this order.

4. The IAC, who had to deal with the penalty proceedings, after considering the assessee's explanation; came to the conclusion that the assessee

had agreed to the assessment only because it was not in a position to prove that the amounts belonged to certain others and that, therefore, the

provisions of Section 271(1)(c) were attracted. He levied a sum of Rs. 5,800 as penalty and the said sum was slightly in excess of the minimum

leviable under that provision. There was an appeal to the Appellate Tribunal and the Tribunal, after noticing the decisions of the Supreme Court in

Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, and of Hindustan Steel Ltd. Vs. State of Orissa, , came to the

conclusion that there was preponderance of probability in favour of the assessee's explanation and that penalty could not, therefore, be levied and

cancelled the penalty. The order of the Tribunal has given rise to the reference of the questions already set out.

5. Section 271(1)(c) provides for the levy of penalty in a case where the assessee conceals the particulars of his income or furnishes inaccurate

particulars thereof. In the present case, as seen already, as soon as the ITO noticed certain features about the entries as well as about the persons,

the assessee agreed to the assessment of the peak credit. The agreement could only be on the basis that the amounts belonged to the assessee and

that the amounts earned by it were brought in the form of cash credits in the names of strangers.

6. In the face of the assessee's own admission that the amount represented its income, there is absolutely no other evidence required to show that

the amount represented its income and that it had been concealed from the return. The Tribunal, as mentioned already, has referred to the case

decided by the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . The applicability of the principles

laid down in that decision has been considered by the Bombay High Court in- Western Automobiles (India) Vs. Commissioner of Income Tax,

Bombay City-I, Bombay, , to a case like this. That was also a case where the ITO discovered in the books of accounts of the assessee certain

hundi loans to the tune of Rs. 90,000. The assessee agreed to the addition of the said sum. The legality of the penalty proceedings taken in respect

of the concealment of the said sum came up for consideration by the Bombay High Court. The decision in Commissioner of Income Tax, West

Bengal I, and Another Vs. Anwar Ali, was cited and at page 1053 the Bombay High Court observed as follows :

It was held that the decision of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, was not

applicable to a case where the addition was not by a mere rejection of the explanation of the assessee but on account of an admission of the

assessee that the amounts may be added as its income as was the case before the Delhi High Court in Durga Timber Works Vs. Commissioner of

Income Tax, .

7. Again at page 1056, the principle applicable was set out as follows :

In our view, whether a revised return is filed or an admission is made before the Income Tax Officer in the course of original assessment

proceedings would seem to make little difference. The basis in both cases is the same, viz., that the assessee agreed to accept the amounts as his

income from business for the year in question. Once this true position is established, it would appear that it would be sufficient for the department

to seek to discharge the onus in the penalty proceedings by relying upon this admission.....

8. We agree with this statement of the legal position. In a case where the assessee himself has admitted that the amount represented his own

income, no further evidence would be necessary to show that it was the amount

which represented his income and that it had been concealed in the return.

9. Learned counsel for the assessee cited a decision, *Gumani Ram Siri Ram Vs. Commissioner of Income Tax*, . In that case, the ITO noticed

certain cash deposits in the name of one Ramesh Trading Company, and asked him to prove the genuineness of these entries in the books. The

assessee stated that he was not in a position to prove the genuineness of those entries and made a statement admitting the amount as his income.

The assessee was then assessed on the said income, apart from the other income returned by him. Penalty proceedings were taken with reference

to the concealment of Rs. 12,000 and the Punjab High Court held that on the facts and in the circumstances of the case the penalty could not be

levied merely because the cash deposits were ""surrendered"" by the assessee, unless there were materials on record to show that the ""surrendered

item"" was his income. With great respect, we are unable to agree with the view that commended itself to the learned judges. Where the assessee

had himself admitted that certain amount represented his income, it is unnecessary to look for any other evidence. The ""surrender"" is only an

admission that that amount is income. In fact, the conduct of the assessee in such cases in offering the amount for assessment itself cancels the

earlier stand taken by him, viz., that the amount represented receipts from certain third parties. No one, at any rate in these days, agrees to pay tax

on an amount unless it was his income.

10. Learned counsel referred us to two other decisions of this court, both unreported. The first decision was rendered in T. C. No. 350 of 1974 in

the case of *Additional Commissioner of Income Tax Vs. Smt. V. Kanakammal*, . In that case, the question which arose for consideration was

whether the Expln. to Section 271(1)(c) was applicable. It is in the context of the Expln. that the court went into the question whether there was

any fraud or negligence. We are not concerned in the present case with any such plea based on the Expln. which in some circumstances threw the

onus on the assessee.

11. The other decision in T. C. No. 222 of 1975 in the case of *Commissioner of Income Tax Vs. Gordhandas Moolchand*, was a case where

there was a voluntary disclosure by the assessee to the extent of Rs. 3,85,000.

The ITO found another sum of Rs. 2,15,000 to be income. These totalled Rs. 6,00,000. In making the assessment for the assessment years 1962-63 and 1963-64, the ITO had added a total sum of Rs. 5,27,780 and the balance of Rs. 72,220 was treated as income assessable in the assessment for 1964-65. The question was whether penalty could be levied with reference to the said sum of Rs. 72,220. It was pointed out by this court that there was no evidence to show that this sum of Rs. 72,220 added by the ITO could in fact be related to the assessment year 1964-65. As far as the sum of Rs. 72,220 was concerned there was no admission on the part of the assessee that it was income. Merely because the ITO added that amount, that by itself would not constitute evidence of concealment. We do not consider that there is anything in this decision which is of assistance to the points now before us.

12. In Commissioner of Income Tax Vs. J.K.A. Subramania Chettiar, , this court had to deal with a case where the assessee had disclosed certain income in a revised return. In the revised return, certain amounts not disclosed in the original return were shown. The question was whether penalty could be levied with reference to the omission to include in the original return the amount added in the revised return. It was pointed out by this court that the mere fact that the assessee furnished the particulars before any detection was made by the department would not be relevant, and that Section 139(5) envisaged the assessee submitting a revised return in cases where in the original return there was some omission or wrong statement. In cases where there was concealment or false statement in the original return, the submission of a revised return would not have the effect of wiping out the concealment. Cases of bona fide mistake rectified by the submission of a revised return would stand on a different footing.

The present case would stand on a par with the case where the assessee came forward with the revised return showing income which was concealed earlier. If penalty could be levied on a charge of concealment of income from the original return after a revised return was filed, there is no reason why penalty should not be levied when a person made an oral admission and stopped short of submitting a revised return. That is also the view of the Bombay High Court in Western Automobiles (India) Vs. Commissioner of Income Tax, Bombay City-I, Bombay, as already seen

from the passage already extracted from page 1056.

13. In these circumstances, we consider that the Tribunal was wrong in cancelling the penalty. The questions referred are accordingly answered in the negative and in favour of the revenue. The revenue will be entitled to its costs. Counsel's fee Rs. 500.