

(1982) 04 AHC CK 0015

In the Allahabad High Court

Case No : Income-tax Reference No. 706 of 1978

Commissioner of Income Tax

APPELLANT

Vs

M. Habibullah

RESPONDENT

Date of Decision : 20-04-1982

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1982) 29 CTR 281 : (1982) 136 ITR 716 : (1982) 10 TAXMAN 216

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; None, for the Respondent

Judgement

Rastogi, J.—The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad (hereafter "the Tribunal"), has referred the following questions for the opinion of this court u/s 256(1) of the I.T. Act, 1961 (hereafter "the Act") :

"1. Whether, on the facts and in the circumstances of the case, the assessee had discharged the onus under the Explanation to section 271(1)(c) of the I.T. Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was in law justified in cancelling penalties of Rs. 26,000, Rs. 1,49,000 and Rs. 8,000 imposed by the Inspecting Assistant Commissioner u/s 271(1)(c) of the I.T. Act, 1961, in the assessment years 1967-68, 1968-69 and 1969-70 ?"

2. The respondent-assessee, M. Habibullah, is an individual and a non-resident. He had not filed any return of income for the assessment years 1967-68 to 1969-70, On receipt of information that there were a large number of deposits in the bank accounts of the assessee, the ITO took action u/s 147(a) of the Act for these three years. Notices were issued to the assessee and he filed returns showing his income at nil. During the course of assessment, the ITO found that in the previous year relevant to the assessment year 1967-68, there were two deposits of Rs. 11,000 and Rs. 15,000 in the account of the assessee with the

Punjab National Bank, Varanasi. It was claimed by the assessee that those amounts had come to him from his son, Shaukat AH, who in turn ascribed the source to one Munshi Raghunath Prasad. This gentleman was an employee of the assessee himself. The ITO required the assessee to produce him but the assessee could not do so because he had died in 1970. The ITO hence treated these deposits as the assessee's own income from an undisclosed source.

3. In the previous year relevant to the assessment year 1968-69, three deposits aggregating to Rs. 1,49,000 were found in the assessee's bank account. His explanation that he had received those amounts from one H. M. Patel was not accepted because Sri Patel could not be produced before the ITO and his whereabouts could not be ascertained. This total amount as well was treated as the assessee's income from an undisclosed source. A similar deposit of Rs. 8,000 was found in the assessee's bank account in the previous year relevant to the assessment year 1969-70. The assessee claimed that he had received this amount from a relation of his, Abdul Habibi. The ITO did not accept that explanation and treated that amount as the assessee's own undisclosed income. These assessment orders were confirmed by the AAC as also by the Tribunal.

4. The ITO initiated penalty proceedings as well for all these three years u/s 271(1)(c)/274(2) of the Act and referred the cases to the IAC. The IAC after hearing the assessee held that the assessee had concealed the particulars of his income to the extent of the aforesaid deposits appearing in his bank account in the year under consideration and imposed penalties in the sums of Rs. 26,000, Rs. 1,49,000 and Rs. 8,000 for these three years, respectively. Aggrieved, the assessee took up the matter in appeals before the Tribunal. The Tribunal has taken note of the fact that the findings given in assessment proceedings were relevant and have probative value and further that under the Explanation to Section 271(1)(c) the onus was on the assessee to prove that the failure to return the correct income was not due to any fraud or gross or wilful neglect on his part. However, since penalty proceedings are quasi-criminal in nature, it has taken the view that "something more is required than mere findings at the assessment stage. It has to be ensured whether in the totality of circumstances and keeping in view the preponderance of probability that the charge of concealment and furnishing inaccurate particulars of income has been brought home to the assessee."

5. After giving its anxious consideration, the Tribunal felt itself unable to hold that the charge had been brought home to the assessee. In its opinion since Raghunath Prasad had died, the assessee could not produce him. Similarly, the whereabouts of Sri Patel were not known. The assessee, however, filed confirmatory letter and affidavit from him and according to it : "It is difficult to hold beyond reasonable doubt in these quasi-criminal proceedings that the money did not in any case belong to him."

6. In the result, the Tribunal cancelled the penalty orders and now, at the instance of the Commissioner, the questions mentioned above have been

referred to this court.

7. We have already reproduced above the facts found by the Tribunal. After hearing the counsel for the department we find that the view taken by the Tribunal is manifestly erroneous in law. By Finance Act, 1964, an Explanation was added to Section 271(1)(c), which reads:

"Explanation.--Where the total income returned by any person is less than eighty per cent. of the total income (hereinafter in this Explanation referred to as the correct income) as assessed u/s 143 or section 144 or section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) of this subsection."

8. It would be seen that this Explanation creates a fiction and it is that where the total income returned is less than eighty per cent. of the total income assessed, it shall be presumed that the assessee had concealed the particulars of his income or had furnished inaccurate particulars in respect of the same. It is, however, a rebuttable presumption. The assessee can disprove it by showing that the failure to return the correct income was not due to any fraud or any gross or wilful neglect on his part. The onus is now no longer on the department to prove that the assessee had concealed his income or had furnished inaccurate particulars in respect of the same. It is correct that these penalty proceedings are quasi-criminal in nature. The nature of onus of proof is as in a civil case and the matter is to be decided on preponderance of probabilities. The Tribunal was conscious of this aspect of law but when it came to its application to the facts of the case, it absolutely ignored the same. The findings given in assessment proceedings are certainly relevant and have probative value. However, penalty proceedings are different from assessment proceedings. The assessee can give evidence in these proceedings to show that the failure to return the correct income was not due to any fraud or gross or wilful neglect on his part. In the present case, the assessee did not produce any evidence in penalty proceedings. The findings in assessment proceedings were against him. The circumstances, on which the Tribunal placed reliance, had already been considered in the assessment proceedings and disbelieved. We fail to understand as to how a different interpretation could be put on those circumstances in penalty proceedings without the assessee producing any fresh evidence or placing any additional and fresh circumstance in penalty proceedings. Evidently, the assessee failed to discharge the onus and, on the facts of the instant case, the Tribunal was not justified in cancelling the penalty orders.

9. We, therefore, answer both the questions in the negative, in favour of the department and against the assessee. Since no one has appeared before us on

behalf of the assessee, we make no order as to costs.