
(1973) 06 PAT CK 0002
In the Patna High Court
Case No : Tax Case No. 19 of 1967

Commissioner of Income Tax	Vs	APPELLANT
Meghraj Ramchandra		RESPONDENT

Date of Decision : 25-06-1973

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1974) 97 ITR 559 : (1973) 6 PLJR 483

Hon'ble Judges : N.L. Untwalia, C.J.; S.K. Jha, J

Bench : Division Bench

Advocate : Tarkeshwar Prasad, for the Appellant; Rameshwar Prasad II, for the Respondent

Judgement

Untwalia, C.J.—This court required the Income Tax Appellate Tribunal, Patna, u/s 256(2) of the Income Tax Act, 1961 (hereinafter called "the Act"), to draw up a statement of the case and refer it to this court on the following question of law :

"Whether, on the facts and in the circumstances of the case, a penalty was legally imposable on the assessee u/s 271(1)(c) read with Section 274 of the Income Tax Act ?"

2. The Tribunal accordingly has stated the case and referred the question of law aforesaid for answer by this court.

3. The assessee was a registered-firm and in the accounting year ending on November 6, 1961, it was engaged in the business of sale of sugar on a wholesale basis. The penalty proceeding relates to the said accounting year, the corresponding assessment year of which was 1962-63. During the course of the assessment proceeding for the said year, the Income Tax Officer found that the assessee had pledged on April 18, 1961, 1,491 bags of sugar with the Bank of Bihar for the purpose of obtaining an overdraft. The stock register of the date--April 18, 1961--showed that the actual number of bags in the hands of the assessee was 1,210 and that the Income Tax Officer detected a discrepancy of

281 bags. The assessee was asked to explain this discrepancy and it submitted its explanation in its letter dated June 29, 1963, to the effect that an inflated stock was shown with a view to obtain a larger amount of overdraft. The Income Tax Officer asked the assessee to get confirmation from the bank that the stock lying with them did not represent the actual state of affairs. The assessee refused to comply with this requisition. The Income Tax Officer treated the value of 281 bags of sugar amounting to Rs. 29,495 as the assessee's income from undisclosed sources. He added the said income in the assessment order. Thereafter, he initiated proceedings u/s 271(1)(c) of the Act and followed the procedure prescribed in Section 274. The case was referred to the Inspecting Assistant Commissioner. He gave notice and an opportunity to the assessee to be heard to substantiate its explanation. The assessee submitted that the stock account was subject to periodical checks of the supply department.

4. The Inspecting Assistant Commissioner of Income Tax, however, came to the conclusion that the assessee had concealed the particulars of its income in regard to 281 bags. According to him, the assessee's explanation could not be accepted that as a matter of fact 1,210 bags only had been pledged with the bank although the record showed that 1,491 bags had been pledged.

5. On appeal to the Income Tax Appellate Tribunal, it remitted, the penalty as it found that the stock register was subject to criticism by the supply department and that the Income Tax department could not repulse the assessee's contention that an imaginary stock was shown as having been pledged with the bank.

6. The assessment order of the Income Tax Officer adding the sum of Rs. 29,495 is annexure "A". The appeal from the assessment order on this point was maintained, as would appear from the order of the Appellate Assistant Commissioner (annexure "B"). The assessee went up in further appeal before the Tribunal. It also maintained the addition of Rs. 29,495 (vide annexure "C"). The explanation of the assessee does not seem to have been accepted by the Tribunal and the addition was maintained.

7. In the penalty proceeding, the Inspecting Assistant Commissioner recorded findings in his order dated June 16, 1964. The findings seem to be that 281 extra bags of sugar had been pledged with the bank, those bags had been purchased with finance outside the books and since the assessee had not attempted to show the source from which these purchases had been effected, the Income Tax Officer was justified in treating the sum of Rs. 29,495 as the assessee's income from undisclosed sources. Merely on those findings, the Inspecting Assistant Commissioner imposed a penalty of Rs. 8,600 on the assessee. It went up in appeal. The finding of the Appellate Tribunal based upon the examination of the stock register and other materials is that, as the stock register was severely checked by the officers of the supply department from time to time, the Income Tax Officer had to establish the guilt of the assessee and mere falsity of an explanation or that the assessee could not prove its case could not be a ground for levy of penalty. The further finding seems to be that the stand of the

assessee that an imaginary, inflated stock was shown to the bank seems to have been accepted by the Income Tax Appellate Tribunal.

8. At the relevant time the provision of law contained in Section 271(1)(c) was exactly the same as the one contained in Section 28(1)(c) of the Indian Income Tax Act, 1922. The liability attracting the imposition of penalty under the said provision of law is created if the assessee "has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income". The word ""deliberately" has been omitted by Central Act 5 of 1964. Since this case relates to a period prior to April 1, 1964, when Act 5 of 1964 came into force, it has to be judged with reference to the provision of law contained in Section 271(1)(c) wherein, prior to that date, the word "deliberately" was also there. There are several decisions of this court as also of the Supreme Court with reference to the provision of law contained in Section 28(1)(c) of the Indian Income Tax Act, 1922. The purport of the decisions which I shall briefly be discussing in my judgment seems to be that in order to justify the imposition of a penalty the Income Tax department has to show that the assessee has deliberately concealed the particulars of his income or deliberately furnished inaccurate particulars thereof. The mere fact that a certain sum of money has been treated as his income from an undisclosed source for the purpose of assessment cannot necessarily lead to the conclusion that the assessee had concealed the particulars or deliberately furnished inaccurate particulars. Something more has to be shown by the department in order to make the assessee liable to pay the penalty. Even the rejection of the assessee's explanation or finding it false is not sufficient to find the assessee guilty of having concealed the particulars of his income or deliberately furnished inaccurate particulars thereof. The first part of Clause (c) uses the word "concealed" and that word by itself postulates a deliberate or dishonest act on the part of the assessee. To find that the assessee has been guilty of such an act, it is necessary for the department to show from the materials in the record or by any other positive evidence that the income added in the assessment order was in fact his income and deliberately the assessee had concealed it. In the second part of Clause (c) so long as the word "deliberately" was there, the same result followed. We are not concerned in this case as to what is the effect of deleting the word "deliberately". Applying the law as laid down by this court and the Supreme Court, it is to be noticed from the finding of the Appellate Tribunal recorded in the penalty proceeding that the Tribunal in the first instance, it appears, was not prepared to reject the assessee's explanation as untrue. There is no finding recorded in any of the orders that, as a matter of fact, the assessee had pledged 1,491 bags of sugar with the bank although in its stock register and books of account it had accounted for 1,210 bags. Secondly, it appears to me that the Tribunal's view is that even if its explanation was not found to be correct or found to be false, yet without there being anything further placed on behalf of the department, the assessee could not be found guilty of having either concealed the particulars of its income or deliberately furnished inaccurate particulars thereof. In such a

situation, it is difficult to decide this reference in favour of the department and to hold that on the facts and in the circumstances of the case the penalty could be legally imposed u/s 271(1)(c) of the Act as it stood at the relevant time.

9. The Tribunal in its appellate order has relied upon a decision of this court to which I was a party in COMMISSIONER OF Income Tax, BIHAR and ORISSA Vs. MOHAN MALLAH., In this case, the decisions of this court in earlier two cases were followed, namely, Khemraj Chaggan Lal Vs. Commissioner of Income Tax, and Lakshmi Narain Shambharam v. Commissioner of Income Tax, [1963] 49 I.T.R 350 (Pat.), the two decisions in MURLIDHAR TEJPAL Vs. COMMISSIONER OF Income Tax, PATNA., and BHAGWANDAS SHYAMSUNDER Vs. COMMISSIONER OF Income Tax, PATNA., were distinguished. Learned counsel for the department placed strong reliance on the latter two decisions. It would be noticed from the facts of the four cases aforesaid that there is no appreciable difference in the principle laid down in them. Question is of its application to the particular facts of a case. In the case of Murlidhar Tejpal, the earlier decision of this court in the case of Khemraj Chagganlal was distinguished and it was pointed out that while in the earlier case there were circumstances to show that the explanation of the assessee might be correct, in the later case the amount had been shown to have been deposited as having been brought from uppar sey, i.e., from above. No evidence was adduced by the assessee before the Income Tax authorities to establish that the amount really belonged to the lady concerned. There were sufficient materials before the Income Tax authorities to enable them to hold that there was wilful suppression by the assessee of the particulars of his income within the meaning of Section 28(1)(c) of the Indian Income Tax Act, 1922.

10. In the case of Bhagwandas Shyamsunder the case was very much worse for the assessee. The Tribunal's finding clearly showed that the assessee concealed particulars of its income ; there were deliberate manipulations in the ledger books. Not only that, amounts deposited in the name of the family members of the assessee in two banks had not been accounted for at all. The facts of the case, therefore, attracted the principle of law laid down in the case of Murlidhar Tejpal.

11. Learned counsel for the department also placed reliance upon a decision of the Madras High Court in Abu Bucker Sait Vs. Commissioner of Income Tax, . It appears that in this case no distinction has been made between the circumstances which can justify in law the adding of a particular sum to the income of the assessee and the circumstances which can make him incur the penal liability u/s 28(1)(c). After having upheld the addition to the income, the point of penalty was not fully discussed in the last paragraph of the judgment wherein only the question as to the imposition of penalty has been referred to.

12. Learned counsel for the assessee also placed reliance upon three decisions of the Supreme Court. In Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, the decision of this court in Commissioner of Income Tax v. Mohan Mallah has been approved. The ratio deduced from that case as also from some

other cases, as noted in the judgment of the Supreme Court, is :

".....that proceedings u/s 28(1)(c) were of a penal nature and it was for the department to establish that the assessee was guilty of concealment of the particulars of income. The mere fact that the assessee had given a false explanation did not prove that the receipt necessarily constituted income of the assessee."

13. It has been further observed by Grover J., in this case, at page 701:

"If there is no evidence on the record except the explanation given by the assessee, which explanation has been found to be false, it does not follow that the receipt constitutes his taxable income.

Another point is whether a finding given in the assessment proceedings that a particular receipt is income after rejecting the explanation given by the assessee as false would, *prima facie*, be sufficient for establishing, in proceedings u/s 28, that the disputed amount was the assessee's income. It must be remembered that the proceedings u/s 28 are of a penal nature and the burden is on the department to prove that a particular amount is a revenue receipt. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false does not necessarily give rise to the inference that the disputed amount represents income. It cannot be said that the finding given in the assessment proceedings for determining or computing the tax is conclusive. However, it is good evidence. Before penalty can be imposed the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars."

14. In *The Commissioner of Income Tax Madras Vs. Khoday Eswarsa and Sons, , Anwar Ali's* case has been followed and it has been further observed at page 376 :

"From the above it is clear that penalty proceedings being penal in character, the department must establish that the receipt of the amount in dispute constitutes income of the assessee. Apart from the falsity of the explanation given by the assessee, the department must have before it before levying penalty cogent material or evidence from which it could be inferred that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars in respect of the same and that the disputed amount is a revenue receipt. No doubt the original assessment proceedings for computing the tax may be a good item of evidence in the penalty proceedings but the penalty cannot be levied solely on the basis of the reasons given in the original order of assessment."

15. In *Commissioner of Income Tax, Kerala Vs. N.A. Mohamed Haneef*, also the decision in *Anwar Ali's* case has been followed.

16. Applying the principles of law laid down by this court and the Supreme Court

in the decisions referred to above, it is clear that in view of the findings recorded by the Appellate Tribunal,, it is difficult to hold as a question of law that any penalty could be imposed upon the assessee in this case. The wordings of paragraph 3 of the appellate order are not very clear. Yet, on a careful reading of the said paragraph, I have already stated that the finding of the Tribunal seems to be that the explanation of the assessee that an inflated figure of the, number of sugar bags pledged with the bank bad beer) given was correct. Even if it was false, mere falsity of the explanation did not prove the charge of deliberate concealment or deliberate furnishing of inaccurate particulars of income. That being so, this reference has got to be answered against the department and in favour of the assessee. It is accordingly held that, on the facts and in the circumstances of this case, a penalty could not be legally imposed on the assessee u/s 271(1)(c) of the Act. The assessee must have the costs of this reference. Hearing fee Rs. 100 only.

S.K. Jha, J.

17. I agree.