

(1987) 07 PAT CK 0015
In the Patna High Court
Case No : Taxation Case No. 71 of 1975

Commissioner of Income Tax

APPELLANT

Vs

M.N. Chatterjee

RESPONDENT

Date of Decision : 03-07-1987

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1988) 170 CTR 87 : (1987) 64 CTR 314 : (1988) 170 ITR 87 : (1987) 35 TAXMAN 219

Hon'ble Judges : Uday Sinha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; None, for the Respondent

Judgement

Uday Sinha, J.—This is a reference u/s 256(2) of the Income Tax Act, 1961. The question referred to us for our opinion is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in cancelling the penalty of Rs. 8,610 imposed by the Inspecting Assistant Commissioner u/s 271(1)(c) and in holding that the assessee did not conceal his income ?"

2. In this reference, we are concerned with levy of penalty in relation to the return submitted for the assessment year 1962-63.

3. The assessee, as an individual, disclosed his sales before the sales tax authorities for the aforesaid assessment year at Rs. 3,59,803, but before the Income Tax authorities he declared his sales at Rs. 2,92,970 for the same assessment year. The assessee failed to explain the source for payment of (i) Rs. 30,000 to Shri S. K. Acharya, and (ii) payment for investment of Rs. 16,500 in house property. The assessee's personal expenses were shown less than in accordance with his standard of living. There was no explanation of the source for payment of life insurance premium. The returned income was Rs. 29,297. The

Income Tax Officer taking an overall view of the matter rejected the stand of the assessee and assessed his total income at Rs. 70,830. The assessment was completed on March 23, 1967. There being a difference of more than 20% between the assessed income and the returned income, proceedings u/s 271(1)(c) read with Section 274 of the Income Tax Act (hereinafter called "the Act") for concealment of income was initiated. The minimum penalty imposable having worked out at more than Rs. 1,000, the case relating to the penalty was transferred u/s 274(2) of the Act to the Inspecting Assistant Commissioner. The Inspecting Assistant Commissioner imposed a penalty of Rs. 8,670, after rejecting the explanation of the assessee.

4. In the penalty proceedings, the assessee did not appear before the Inspecting Assistant Commissioner. He prayed for one month's time, but the prayer for adjournment was rejected, as the proceeding was getting barred by limitation. Along with the prayer for adjournment, the assessee wrote that he had already shown cause in respect of the penalty proceeding before the Income Tax Officer on January 24, 1969. A copy of the explanation to the show-cause notice was enclosed by the assessee with a petition for adjournment dated March 18, 1969. The Income Tax Officer, not being the competent authority to pass penalty order, did not pass any order on the cause shown by the assessee. The Inspecting Assistant Commissioner applied himself to the cause shown by the assessee. He noted that there was obvious discrepancy in the sales figures submitted by the assessee. Whereas, before the Commercial Taxes Department, the sales shown were Rs. 3,59,803, before the Income Tax authorities the sales disclosed were only Rs. 2,92,970. There was thus an obvious gap of about Rs. 67,000. There was no explanation for this discrepancy. Another matter which the Inspecting Assistant Commissioner took note of was that the assessee had shown lower net profit. The assessee had himself showed earlier net profit at the rate of 15% at the rate of Rs. 16 per ton. The third aspect noted by the Inspecting Assistant Commissioner was that the assessee had paid Rs. 30,000 to one S. K. Acharya. The explanation in regard to this payment was not found satisfactory by the Inspecting Assistant Commissioner. The fourth item, being investment of Rs. 1,65,000 in house property, had remained unexplained. It appears that the stand of the assessee was that this investment had been incurred from the savings of his wife which had accumulated through the years. There was then investment mentioned on the life insurance premium and personal expenses. The total investment came to Rs. 57,621.

5. It appears that one of the contentions of the assessee in his reply to the show-cause notice was that the Explanation to Section 271(1)(c) of the Act had no application since the return was for the year 1962-63, i.e., before April 1, 1964, when the Explanation was inducted on the statute book. The Inspecting Assistant Commissioner rejected all the contentions of the assessee and held that there was concealment by the assessee. The finding of the Inspecting Assistant Commissioner was that the concealment was deliberate and had been fully established. According to the Inspecting Assistant Commissioner, the tax sought

to be avoided was Rs. 25,822. Hence, penalty of Rs. 8,610 was imposed.

6. The assessee, being aggrieved by the order of the Inspecting Assistant Commissioner, appealed to the Income Tax Appellate Tribunal. He appeared in person before the Tribunal. The Tribunal in a cryptic judgment set aside the order of penalty observing that the Revenue had not brought any material on record for disbelieving the assessee's explanation showing that he had not concealed his income. The Tribunal held that the Revenue had not established by any evidence that the assessee's average sale rate per ton of coal was more than Rs. 10. It could not, therefore, be said that the assessee furnished inaccurate particulars of his income. The Tribunal held that mere estimate of income without any definite basis did not account for any penalty action. Applying the decision of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , it cancelled the penalty imposed upon the assessee.

7. The Revenue, being aggrieved by the order of the Tribunal, filed an application u/s 256(1) of the Act but without any success. An application was then filed u/s 256(2) of the Act before this court. This court, after hearing counsel for the parties, called for a reference by order dated April 2, 1984. The Tribunal in accordance with the order of this court has submitted the statement of the case and referred the question referred to above for our opinion.

8. The first question that falls for consideration is whether the Explanation to Section 271(1)(c) has any application to the facts of this case or not. That question is no more res integra. That question must be considered to be a closed chapter by the decision of a Full Bench of this court in Taxation Cases Nos. 269, 270, 280 and 281 of 1976, disposed of on April 27, 1987 (COMMISSIONER OF WEALTH-TAX Vs. DALIP KUMAR WORAH AND ANOTHER.,)), to which I also was a party. That related to wealth-tax, but the provisions of law being the same as under the Income Tax Act, the same must be held to apply to cases under the Income Tax Act as well. On the basis of the decision of the Supreme Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , this court held therein that in the matter of levy of penalty, the law to be applied is the law which prevailed on the date when the satisfaction of the assessing officer had been arrived at that there had been concealment of income and that there was a case for levy of penalty. At page 819, the Full Bench observed as follows (See COMMISSIONER OF WEALTH-TAX Vs. DALIP KUMAR WORAH AND ANOTHER.,) :

"To finally conclude, the issue posed at the outset is rendered in the affirmative and it is held that the date of the decision of the authority to initiate proceedings for levying penalty would govern the relevant law applicable for the quantification of the amount of such penalty u/s 18 of the Wealth-tax Act, 1957."

9. The assessment in this case was completed on March 23, 1967. On the same date, penalty proceedings had been initiated. The satisfaction of the Income Tax Officer that there had been concealment of income thus solidified on March 23, 1967. The penalty would, therefore, be levied in terms of the law as applicable

on March 23, 1967. The Tribunal was thus in error in cancelling the penalty on the basis of the authority laid down in the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . There being obvious discrepancy of more than 20%, the obligation to explain the difference was squarely upon the assessee.

10. In Commissioner of Income Tax Vs. Nathulal Agarwala and Sons, , another Full Bench, to which again I was also a party, laid down that whenever there is a difference of more than 20% between the returned income and the assessed income, the Explanation becomes applicable. Once the Explanation becomes operative, three legal presumptions are raised against the assessee. The first presumption is that the amount of the assessed income is the correct amount and it is in fact the income of the assessee himself. The second presumption is that the failure of the assessee to return the aforesaid correct income was due to concealment of the particulars of his income on his part. The third presumption will be that the failure of the assessee was due to furnishing inaccurate particulars of his income. These were held to be rebuttable presumptions, but the initial burden of discharging the onus of rebuttal would be on the assessee. Once the assessee rebutted the presumptions, he will be out of the mischief of the Explanation and unless the Department were to establish afresh that the assessee in fact had concealed the particulars of his income or furnished inaccurate particulars thereof, there could be no penalty. The burden of proof on the assessee would not be unlike the ordinary burden of proof placed on either party in any judicial proceedings to be accepted or rejected upon preponderance of evidence. The burden could be discharged even without fresh materials and upon materials already on the record. That being the law laid down by a Full Bench of this court, this Bench, is bound by it.

11. In the instant case, the assessee did not produce any material to show that his explanation was correct. There was no explanation worth the name why the assessee showed a figure of sale before the Income Tax authority lower than what he had stated before the sales tax authority. There was thus an obvious concealment. Secondly, in regard to assessed income, although it was based on estimate, yet the estimate was based upon the assessee's own percentage of income from the records of the earlier years. If the rate of sale was higher in earlier years, the Income Tax authority was fully justified in holding that the income could not be lower in a subsequent year, as the rate of sale of coal had not come down. In fact, prices have never fallen on any merchandise since 1950. Those were sufficient to hold that there had been concealment of income. In fact, the Tribunal did not consider these matters with any seriousness, but merely held that the Revenue had not brought anything on record to show that the assessee had concealed any income. The concealment of income was writ large on the record. In my view, even if we were to brush aside the Explanation to Section 271(1)(c), concealment would be obvious even upon the authority of the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . In my view, therefore, the Tribunal was not correct in cancelling the penalty of Rs.

8,610 imposed by the Inspecting Assistant Commissioner upon the assessee.

12. For the reasons stated above, I hold in favour of the Revenue and against the assessee and hold that the Tribunal was not correct in cancelling the penalty imposed by the Inspecting Assistant Commissioner u/s 271(1)(c) of the Income Tax Act upon the assessee.

13. The reference is thus answered in favour of the Revenue but without costs. Let a copy of this judgment be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, in terms of Section 260 of the Income Tax Act, 1961.

Ashwini Kumar Sinha, J.

14. I agree.