
(1980) 07 AHC CK 0062

In the Allahabad High Court

Case No : Income-tax Reference No. 593 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Mohinder Singh

RESPONDENT

Date of Decision : 07-07-1980

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1983) 139 ITR 160 : (1981) 5 TAXMAN 93

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.K. Gulati and A. Gupta, for the Appellant; Bharatjee Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, had referred the following question for opinion of this court:

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in estimating the concealed income of the assessee at Rs. 3,000 only, even though his total income had been computed at Rs. 25,000 as against the returned income of Rs. 14,768 and in reducing the amount of penalty on that basis ? "

2. The dispute relates to the assessment year 1970-71. The assessee was carrying on business of assembling pumping sets and manufacturing of canal gates. He filed a return showing an income of Rs. 14,768, In the course of inquiry the ITO had found that the assessee had not incorporated accounts relating to 27 vouchers in his account books, and that an amount of Rs. 2,000 paid in cash to M/s. Machinery Spares, Ghaziabad, on March 17, 1970, was recorded in his account books subsequently, i.e., on March 18, 1970. Some other defects were noticed with the result that the book version was rejected, and the income estimated at Rs. 30,000. Proceedings for levy of penalty u/s 271(2) of

the I.T. Act, 1961, was also initiated. The estimate of income was confirmed by the AAC. On appeal, the Tribunal found that out of the 27 vouchers, 12 were reconciled, with the result that only an amount of Rs. 2,500, as represented by the remaining vouchers, remained unaccounted for. The plea of the assessee in respect of these vouchers that they did not belong to him was rejected. Regarding discrepancy in the noting of the payment of Rs. 2,000 to Ghaziabad party the assessee's explanation that payment was made at Ghaziabad and entries were made when he returned from the place was not accepted by the Tribunal, as there was no evidence to show that the assessee had gone to Ghaziabad. The Tribunal as such rejected the accounts, and estimated the income at Rs. 25,000.

3. In the penalty proceedings an amount of Rs. 15,230 was imposed as penalty, being approximately equal to the difference between the assessed income and the returned income. An appeal filed against this order was rejected by the AAC. The matter then came up in appeal before the Tribunal. The Tribunal found that the assessee was guilty of concealment, and then went on to consider the amount of concealment for purposes of imposition of penalty. It held that so far as the amount of Rs. 2,000 was concerned, that was incorporated on a subsequent date, but this was not due to any fraud or gross negligence or willful neglect on the part of the assessee. As respects the 27 vouchers, it held that 12 vouchers were satisfactorily reconciled with the accounts, and the balance, viz., of the value of Rs. 2,500, were not recorded in the account books of the assessee. On the basis of this, the Tribunal estimated the concealed income at Rs. 3,000, taking into account the value -of the purchases represented by these vouchers and estimated the profit thereon. It, as such, reduced the penalty to Rs. 4,500, being 150% of the concealed income which was estimated by the Tribunal to be Rs. 3,000. The Department had contended that for the purposes of imposition of penalty the estimate of concealed income made in the quantum appeal, in cases covered by the Explanation to Section 271, has, as a matter of law, to be accepted for fixing the amount of penalty. This contention was, in our view, rightly rejected by the Tribunal. It is settled that proceedings for penalty are of quasi-criminal nature, and while adjudging as to whether the assessee is guilty of concealment, the Tribunal has to examine the facts afresh, and is not to be guided by the findings given in the quantum appeal. This being so, the Tribunal has to determine as to whether an assessee is guilty of concealment, and further the amount of concealed income, in order that the amount of penalty to be imposed on an assessee can be determined. It is no doubt true that the findings given in the quantum appeal, as regards the income of an assessee is relevant evidence for purposes of determining the amount of concealment in a penalty matter, but that finding is not binding in the penalty proceedings. The Explanation to Section 271(1)(c) does not have the effect of fixing the quantum of concealment for purposes of imposition of penalty.

4. The provision for penalty in the cases covered by Section 271(1)(c)(iii) in the relevant year was to the following effect :

" 271(1)(c)(iii): in the cases referred to in Clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income."

5. We are of the view that the function of the fiction created by the Explanation is to convert a case where the assessed income is more than eighty per cent. of the returned income into a case which would be covered by Section 271(1)(c), unless the assessee proves that he was not guilty of any fraud or any gross or willful neglect in filing the return of his income. The Explanation exhausts itself once this purpose is achieved, and does not create any further fiction to the effect that the assessed income has to be taken as the correct income for the purposes of imposition of penalty u/s 271(1)(c)(iii). For purposes of fixing the quantum of penalty u/s 271(1)(c)(iii), the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has to be found by the authority concerned. In doing so it may or may not accept the amount assessed as the concealed income of the assessee in the quantum matter. Any other interpretation would make the proceedings for levy of penalty completely subservient to the assessment proceedings, which does not appear to be the scheme of the Act.

6. Counsel for the Revenue also urged that the Tribunal had omitted to take into consideration relevant facts while estimating the concealed income at Rs. 3,000 only. It was urged that apart from the fact that the assessee had made purchases not shown in the vouchers, there were other irregularities in the accounts which shows that the assessee had been carrying on business outside the books. It was contended that in such a situation the Tribunal erred in confining the concealed income to Rs. 3,000 only, for, this amount related only to the purchases which were not accounted for, while the assessee had entered into a number of other transactions which did not find place in his accounts. On the frame of the question it is not possible for us to consider this aspect of the matter, for the question as referred does not solicit an inquiry into the validity of the finding regarding the estimated concealed income on this score. All that the question requires us to consider is as to whether the Tribunal was justified in fixing the concealed income at Rs. 3,000 when the total income had been computed at Rs. 25,000 in the quantum matter. It is as such not possible to go into this aspect of the matter.

7. We, accordingly, answer the question in the affirmative, in favour of the assessee, and against the Department. The assessee is entitled to its costs, which are assessed at Rs. 200. Counsel's fee is assessed at the same figure.