

(1975) 07 MAD CK 0012

In the Madras High Court

Case No : Tax Case No. 275 of 1967 (Reference No. 94 of 1969)

Commissioner of Income Tax

APPELLANT

Vs

M.S.T.V. Neethimohan and Co.

RESPONDENT

Date of Decision : 09-07-1975

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1977) 107 ITR 585

Hon'ble Judges : V. Sethuraman, J; V. Ramaswami, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; P.C. Sarangapani, for the Respondent

Judgement

Sethuraman, J.—The assessee is a registered firm carrying on business of manufacture and sale of agarbathis. The relevant assessment year

is 1962-63, the previous year ending on March 31, 1962. Most of the sales were effected by the assessee through vans. Goods were taken in

these vans and fresh supplies to these vans were made through public carriers. The supplies to the vans were debited to the accounts of each van

maintained for that purpose. The assessee did not have a stock account to record the supplies sent through the vans nor did it have a manufacturing

account or a stock register for the issue of raw materials.

2. The van salesman remitted monies periodically. In the relevant year, the Income Tax Officer noticed that on a number of occasions, the cash

balances with the van salesman was not sufficient to make remittances recorded in the books. On April 15, 1961, the cash available was Rs. 207

while the amount remitted was Rs. 5,000. Similarly, on June 11, 1961, the cash available was Rs. 10,706 while the remittance was Rs. 12,820.

There were similar remittances on other occasions also. The assessee explained that these excess remittances came to be made out of collections of advances. The total amount of the remittances which has exceeded the available cash came to Rs. 34,352. The Income Tax Officer did not accept the assessee's explanation and he added a sum of Rs. 60,000 to the returned income. The assessee's appeal to the Appellate Assistant Commissioner was not successful. On further appeal, the Tribunal held that the instances of excess remittances were not merely illustrative but exhaustive so that they could be taken as representing the under-statement of sales. The Tribunal saw no justification for enhancing the turnover by any amount in excess of that sum. A gross profit rate of 55 per cent. has been applied in the assessee's case in the immediately preceding year. In the view of the Tribunal it was reasonable to apply this rate on the disclosed turnover in view of the sum of Rs. 34,352. In effect, the Tribunal rejected the books and made an assessment with reference to the turnover as shown by the books and the addition as found necessary.

3. In due course, proceedings for the levy of penalty were initiated. The assessee filed the explanation to the show-cause notice for the levy of penalty. The Inspecting Assistant Commissioner of Income Tax who came to deal with the penalty proceedings held that there was concealment of income and that the penalty was warranted. Having regard to the fact that only Rs. 34,352 could be taken as relating to the under-statement of sales, he levied Rs. 10,000 as penalty.

4. The assessee appealed against this order of penalty to the Tribunal and submitted that there was no concealment warranting an application of Section 271 of the Act. The Tribunal was not fully satisfied that this was a clear case of concealment of income. At the worst, in the view of the Tribunal, this was a borderline case where the assessee should be given the benefit of doubt. The explanation offered by the assessee in regard to the excess remittances was not found acceptable and an assessment was made rejecting the explanation. If the assessee had any deliberate intention of suppressing the turnover to the extent of Rs. 34,352, the Tribunal considered that the assessee would not have resorted to the method of excess remittances. The Tribunal also considered that the probability of the advances received on certain monies by the van salesmen could not

be ruled out altogether. In the matter of application of penal provisions it considered that it had not been established to that high degree of

probability that the sum of Rs. 34,352 represented the turnover which the assessee had deliberately suppressed. It, therefore, deleted the penalty.

5. It may be mentioned here that the members who constituted the Bench which heard the appeal against the assessment are the same as disposed of the penalty appeal.

6. At the instance of the department the following question has been referred to this court for opinion :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the penalty levied u/s 271(1)(c) for the assessment year 1962-63 ?

7. Learned counsel for the revenue submitted that this is a clear case where it had been proved to the hilt that there were excess remittances on

occasions when there was no cash available with the van salesmen and where the assessee could not offer any explanation with reference to those

excess remittances and that the Tribunal itself had accepted that those excess remittances represented the sale proceeds. It would, therefore,

follow, according to counsel, that there was suppression of sales to this extent warranting the levy of penalty.

8. We have carefully considered the submissions made on behalf of the revenue and we are unable to accept them. Apart from the explanation

which was given by the assessee regarding these excess remittances and which was not found acceptable, there is no other material available to

show that there was any concealment of amounts by these van salesmen which has been accounted for. It is true that the assessment proceedings

would constitute evidence for the purpose of penalty proceedings. But, neither in the assessment proceedings nor in the penalty proceedings is

there any material to show that there was actual suppression of sale's so as to justify the inference that the assessee had concealed particulars of

his income. As we are not satisfied that a deliberate suppression of income has been made in the present case, we consider that the Tribunal rightly

deleted the penalty. The question is, therefore, answered in the affirmative and against the revenue. The assessee will have its costs. Counsel's fee

Rs. 250.