

(1970) 03 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 208 of 1968

Commissioner of Income Tax

APPELLANT

Vs

Navnitlal M. Mehta

RESPONDENT

Date of Decision : 30-03-1970

Acts Referred:

Income Tax Act, 1922 — Section 28(1)

Citation : (1977) ILR (MP) 1032 : (1970) 77 ITR 990 : (1971) JLJ 594 : (1970) 15 MPLJ 578 : (1970) MPLJ 573

Hon'ble Judges : T.P. Naik, J;S.P. Bahrgava, J

Bench : Division Bench

Advocate : M. Adhikari and P.S. Khirwadkar, for the Appellant; K.A. Chitale and V.S. Dabir, for the Respondent

Judgement

Naik, J.

This is a reference u/s 66(1) of the Income Tax Act, 1922, at the instance of the Commissioner of Income Tax, Madhya Pradesh,

The question referred to this court for decision is:

" Whether, on the facts and in the circumstances of the case, the Income Tax authorities were justified in imposing a penalty on the assessee u/s 28(1)(c) of the Income Tax Act ?"

The facts are in a narrow compass and may shortly be stated as follows :

The assessee is an individual. The assessment for the year 1957-58 was originally made on January 17, 1958. Subsequently, during wealth-tax proceedings for the same year, it was found that as per net wealth admitted by the assessee, he had 5991/2 tolas of gold as on March 31, 1957, which was valued at Rs. 45,050. The possession of this gold had at no time previously been disclosed by the assessee. The Income Tax Officer initiated proceedings against the assessee u/s 34(1)(a) of the Act for reassessing the alleged escaped

assessment of Rs. 45,050. During these proceedings the assessee was able to satisfy the Income Tax Officer regarding his purchase of 349 tolas of gold worth Rs. 37,240. For the balance of the gold, the explanation of the assessee regarding its source was not accepted by the Income Tax Officer. In the result, the Income Tax Officer held that the purchase price of 250 1/2 tolas of gold, amounting to Rs. 29,972 was income from undisclosed sources. The assessee was, accordingly, reassessed on this amount, and the reassessment was confirmed in appeal by the Appellate Assistant Commissioner, and, subsequently, by the Income Tax Appellate Tribunal on a further appeal.

The Income Tax Officer then started penalty proceedings against the assessee u/s 28(1)(c) of the Act and assessed him to a penalty of Rs. 18,000. The penalty levied was confirmed by the Appellate Assistant Commissioner on appeal. On a further appeal to the Tribunal, the levy of penalty was set aside by it saying:

" It would thus appear that the whole case of the department is based on the finding in this regard given by the Tribunal. We have re-read the Tribunal's order, to which one of us was a party, particularly the portions quoted in the orders below; but all that we find is that the addition was sustained because the assessee was unable to prove the purchases and the assessee could not even otherwise be said to be possessed of resources to make such purchases. It is difficult to see how from this finding it could be held that the assessee had concealed his income.

The departmental representatives sought to have the order of the Appellate Assistant Commissioner sustained relying on the decision of the Allahabad High Court in LAL CHAND GOPAL DAS Vs. COMMISSIONER OF Income Tax, U.P. AND V.P., according to which the onus was on the assessee to prove that the income assessed was not concealed income. With respect, however, we are not able to follow the said decision. There is first a decision of the Bombay High Court in Commissioner of Income Tax, Ahmedabad Vs. Gokuldas Harivallabhdas, . According to that decision, the onus in penalty matters is squarely on the department; the assessee has no such onus to discharge. This decision has been followed by the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. L.H. Vora, . It has been held that the decision of the Bombay High Court that proceedings u/s 28(1)(c) of the Act for imposing a penalty are penal proceedings and not mere proceedings for assessment of tax and, being in the nature of criminal proceedings, the burden is on the department to prove that the amounts added in the assessment were the assessee's income and that that income was concealed or false particulars of it were given by the assessee and that the mere unsatisfactory nature or falsity of the explanation given by the assessee is not sufficient for coming to the conclusion that the receipt in question was income and there has been concealment of such income. It has been further added that the Supreme Court has not reversed or disapproved of the principle laid down by the Bombay High Court in Gokuldas's case in the case of C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, or in any

of the later rulings of the Supreme Court. The Gujarat High Court expressly dissented from the Allahabad decision in Lalchand Copal Das's case as also from a similar decision of the Madras High Court in P. K. Kalasami Nadar Vs. Commissioner of Income Tax, Madras, . In view of the above, we have no hesitation in holding that the charge of concealment having not been brought home to the assessee, no penalty can be levied against the alleged concealment."

So far as this court is concerned, the view expressed by the Bombay High Court in Commissioner of Incometax v. Gokuldas Harivallabhdas has been followed in Commissioner of Income Tax Vs. Punjabhai Shah, in preference to that of the Allahabad High Court in Lalchand Gopaldas's case and that of the Madras High Court in P. K. Kalasami Nadar's case. The view in Gokuldas Harivallabhdas's case has been affirmed by the Gujarat High Court in Commissioner of Income Tax v. L. H. Vora, as also by the Calcutta High Court in Commissioner of Income Tax (Central), Calcutta Vs. Anwar Ali, where the Allahabad and Madras views have been dissented from.

So far as this High Court is concerned, we are bound by our decision, unless we are persuaded to refer the question to a larger Bench for decision ; and as at present advised, we see no reason to take that course. Nothing has been pointed out to us to take a view different from the one taken in Punjabhai Shah's case and the contentions raised have all been considered in that case.

We may add that the provisions of Section 28(1)(c) of the Act are attracted only when there is material on record to prove: (1) that the assessee has concealed the particulars of his income, or (2) that the assessee has deliberately furnished inaccurate particulars of such income. The use of the expression " concealed " or " deliberately furnished " shows that the legislature did not intend to penalise the mere inability of the assessee to satisfy the tax authorities regarding the source of certain items of receipts received by him or entered in his account books. The law casts a burden on the assessee to account for these and, on his failure to do so, empowers the revenue to presume that they are income from undisclosed sources. It does not, in addition, say that, on his failure to explain their source, he shall also be liable to penalty. For the purpose of levying penalty, the law requires further proof of " concealment " or of " deliberate furnishing of inaccurate particulars ", which must be proved aliunde,

If we may use the phraseology of penal law, then the use of the expressions " conceal " and " deliberately furnish " in Section 28(1)(c) of the Act import the concept of "mens rea" or "guilty mind", and consequently the intent of the legislature appears to be that the assessee is not to be penalised unless the necessary mental element could be spelt out in his act from the material on record. If this legislature intended otherwise, it would have said so. But the legislature has chosen not to do so. The liability for tax assessment has been dealt with separately and the liability for penalty has, in addition, been specifically made to depend on the presence of a specific intent which inheres in the expression "concealment of particulars of income" or "deliberately furnishing

inaccurate particulars of such income ". As the liability for penalty is dependent on the presence of such an intent, the revenue must establish such intent, either directly or indirectly, by bringing on record material from which such an intent could reasonably be inferred.

It may be that in conceivable cases the mere inability of the assessee to satisfactorily account for the source of certain receipts, which the revenue has presumed, in the absence of satisfactory explanation, to be income, may be enough to warrant the inference of " concealment" or " deliberately furnishing inaccurate particulars " ; but then ultimately it would depend on the facts and circumstances of each case, because it may then be that, where additional circumstances could be adduced, it may not be reasonably permissible to draw the inference. In the instant case, we are satisfied that the necessary inference to hold the assessee guilty of " concealment " within the meaning of Section 28(1)(c) of the Act could not be drawn.

We are, therefore, of opinion that, on the facts and in the circumstances of the case, the Income Tax authorities were not justified in imposing a penalty on the assessee u/s 28(1)(c) of the Income Tax Act, and we answer the reference accordingly.

Costs of this reference shall be paid by the Commissioner. Counsel's fee Rs. 100.