

(1986) 05 RAJ CK 0032

In the Rajasthan High Court

Case No : Income Tax RefCase No. 28 of 1980

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

PURKHA RAM.

RESPONDENT

Date of Decision : 01-05-1986

Acts Referred:

Income Tax Act, 1961 — Section 139, 271

Citation : (1986) 56 CTR 264

Hon'ble Judges : S. K. Mal Lodha, J

Bench : Division Bench

Judgement

S. K. Mal Lodha, J. - The Income tax Appellate Tribunal, Jaipur Bench Jaipur (for short the Tribunal) has referred the following two questions for the opinion of this Court, which are said to arise out of its order dt. 12-12-1978 in I.T.A. Nos. 1111 and 1112/JP/77-78 :

"(1) Whether the Tribunal was justified in law in holding that in the penalty proceedings under s. 271(1)(a) of the IT Act, 1961 it is not enough that the failure of the assessee to file the income tax return within the time allowed under the law is proved to be not for reasonable cause and that, in such a case, the ITO has also to establish that the conduct of the assessee was contumacious or dishonest or that the assessee acted in deliberate defiance of the law or in conscious disregard of its statutory obligations ?

(2) If the answer to question No. 1 be in the affirmative, whether, on the facts and in circumstances of the case the Tribunal was right in cancelling the penalty imposed under s. 271(1)(a) of the Act ?"

The assessment years involved are 1968-69 and 1969-70. The point to be considered in this reference is with respect to imposition of penalty under s. 271(1)(a) of the IT Act, 1961 (Act No. XLIII of 1961) (the Act herein). The returns filed in respect of the aforesaid years were delayed, the penalty proceedings were initiated under s. 271(1)(a) of the Act for both the assessment

years. The assessee attempted to give reasonable cause for not filing returns in respect of the aforesaid two years as required by s. 139(1) or the Act. The Income Tax Officer (ITO) was of the opinion that it was for the assessee to initially prove that the failure to file the return within the prescribed time was for reasonable cause and that if this could not be done the presumption will be against him. The ITO further opined that the burden was not cast on the Department to prove the guilty conduct of the assessee and that the assessee has not shown any reasonable cause. He, therefore, imposed the penalties on the assessee. In this connection, a Full Bench decision of the Kerala High Court reported in Commissioner of Income Tax Vs. Gujarat Travancore Agency, was relied on. The assessee went in appeal. The Appellate Assistant Commissioner (AAC) agreed with the ITO that the failure to file the returns of income was not for reasonable cause. He rejected the argument raised that the burden was on the Department to prove that the assessee acted deliberately in defiance of law or was guilty of contumacious conduct or acted in conscious disregard of its obligation with regard to the furnishing of the return of income. Alternatively, the AAC also was of the opinion that if the initial onus was on the Department, such onus stood discharged. He, therefore, maintained the order of imposition or penalties in respect of the assessment years in question. The assessee went in further appeal before the Tribunal. The Tribunal agreed with the conclusion arrived at by the ITO as affirmed by the AAC that the explanation which was given by the assessee for not filing the return was not a reasonable cause. To quote the Tribunal :

"In our opinion, causes given were not reasonable : even after the death of Shri Narain Singh there were other partners who should have taken steps to file the returns of income of the firm in time".

Therefore, the Tribunal addressed itself to the questions posed by it in para 16 of the order. After referring to the judgment of this Court reported in CIT v. Rawat Singh & Sons 1977 CTR (Raj) 248, it reached to the conclusion that for the purpose of imposing the penalties mere absence of reasonable cause is not enough, it should further be shown that there was a deliberate motive contumacious and dishonest or deliberate defiance of law, or conscious disregard of its statutory obligation, in committing default. The Tribunal, therefore, deleted the penalties and allowed the appeals. In these circumstances, on an application being made, the aforesaid two questions have been referred.

2. We have heard Mr. B. R. Arora, on behalf of the Revenue. Nobody has appeared on behalf of the assessee despite service of notice.

Re. Question No. 1, which has been referred to by the Tribunal is an important question of law and on this question there appears to be divergence of judicial opinion.

In Hindustan Steel Ltd. Vs. State of Orissa, which was a case under the Orissa Sales Tax Act (No. XIV of 1947) their Lordships of the Supreme Court, observed

as under :

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

The aforesaid observations of the Supreme Court gave rise to two different interpretations by the various High Courts. One view is whether for the purpose of deciding the question the mens rea is essential element. Reference in this connection may be made to Commissioner of Income Tax Vs. Gangaram Chapolia, , ADDL. COMMISSIONER OF Income Tax, A.P., AND ANOTHER Vs. DARGAPANDARINATH TULJAYYA and CO., and COMMISSIONER OF Income Tax, PATIALA-II Vs. PATRAM DASS RAJA RAM BERI., The principle propounded in the aforesaid decisions is that the mental element or mens rea cannot be imported into the penalty provisions of the Act. It has been held in V. L. Dutt v. CIT (1976) 103 ITR 63 and CIT v. Sewbalakram 146 ITR that mens rea or attitude of mind of the assessee is necessary for the imposition of penalty under the provisions of s. 271 of the Act.

3. This Court in CIT v. Rawatsingh & Sons 1977 CTR (Raj) 248 , after referring to Hindustan Steel Ltd. Vs. State of Orissa, took the view that an order imposing penalty for failure to carry out statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. It was further held that penalty will not also be imposed merely because it is lawful to do so. It was observed as under :

"Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances."

It may be stated that CIT v. Rawatsingh & Sons 1977 CTR (Raj) 248 was a case under s. 271(1) of the Act. The Tribunal has followed it. The Division Bench of this Court in Tiwari Kanhaiya Lal Vs. Commissioner of Income Tax, has observed as under :

"In other words, according to the aforesaid decision of this Court, in order that penalty may be imposed under s. 271(1)(a) of the Act, it is necessary that the assessee has either deliberately acted in defiance of law or his conduct was

contumacious or dishonest. In the said case, this court has not expressed any opinion on the matter of burden of proof."

In *Tiwari Kanhaiya Lal Vs. Commissioner of Income Tax*, there was failure of the assessee to file the return in time. The question arose whether it was a deliberate act and if so on whom the burden lay. The explanation for delay was found unreasonable. The question arose whether the imposition of penalty was valid. After considering the provisions of s. 271(1)(a) of the Act, the Id. Judges summed up the position as under :

"In view of the aforesaid decisions, it can be imposed under s. 271(1)(a) of the Act, it is necessary that failure to file the return within the period prescribed for the same was the wilful and deliberate act of the assessee. The failure on the part of the assessee to file the return can be held to be wilful and deliberate if he has failed to file the return without reasonable cause. The burden of showing that this was so lies on the Department and, therefore, it will be for the Department to establish that the assessee has failed to furnish the return which was required to be furnished without a reasonable cause. The Department can discharge the aforesaid burden by circumstantial evidence. Since the reason for the failure to file the return is a matter within the special knowledge of the assessee, in cases where the assessee fails to file the return in spite of service of notice and fails to offer any explanation for his failure to file the return, a presumption may arise that the assessee had no reasonable cause for his failure to furnish the return within time and the onus placed on the Department would stand discharged. Similarly, in a case where the assessee offers an explanation for his failure to file the return and that explanation is found to be false or unreasonable, the onus which rests on the Department would stand discharged and it can be presumed that the assessee had failed to file the return without reasonable cause."

Before another Division Bench of this Court in *Additional Commissioner of Income Tax Vs. Mohammed and Sons.*, the expression reasonable cause for delay in connection with the assessee's failure to furnish the return in time, came up for consideration. As the assessee's delay in filing the return was found to be without reasonable cause, penalty was imposed. It was held that imposition of penalty was valid.

4. In this case, as stated above, it has been found by the Tribunal that the failure of the assessee to file the return in time was not for reasonable cause. According to Mr. B. R. Arora Id. counsel for the Revenue when the Tribunal has found that the returns were not filed by the assessee within the time allowed by law and that there was no reasonable cause for the same this will be considered that the assessee has without reasonable cause, failed to furnish the return as required by law and once this conclusion is reached, then, penalty can be imposed under s. 271(1)(a) of the Act. In support of this, he has placed reliance on the Full Bench decisions of the Kerala, Orissa and Andhra Pradesh High Courts, whereas the view taken by the Tribunal on the basis of the decision reported in *CIT v. Rawat Singh (supra)* is that mere finding that the failure on the part of the

assessee to file return was not on account of reasonable cause, is not sufficient for imposing penalty, as in such a case, before the penalty is imposed, the department will have further to show that the assessee had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard made in *Hindustan Steel Ltd. v. State of Orissa* (supra), which were applied by this Court in *CIT v. Rawat Singh & Sons* (supra) in a case under s. 271(1)(a) of the Act are applicable to a case where a finding is recorded that there was no reasonable cause for not filing return in time, as required by law as this will mean that the assessee has furnished the return without reasonable cause. In view of the sharp cleavage of the Judicial opinion and further for the fact that Full Benches of the four High Courts have taken the view contrary to the one taken in *CIT v. Rawatsingh & Sons* (supra) we consider it proper that the questions referred to by the Tribunal should be answered by a Full Bench of this Court.

5. We, therefore, make reference of the two questions referred by the Tribunal to the Full Bench of this Court.

6. Let papers be placed before Honble the Chief Justice for constituting Full Bench for answering the aforesaid two questions.