
(1979) 08 PAT CK 0019
In the Patna High Court
Case No : Tax Case No. 80 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Ramdas and Sons

RESPONDENT

Date of Decision : 18-08-1979

Acts Referred:

Income Tax Act, 1961 — Section 139(2), 271(1)

Citation : (1980) 123 ITR 889

Hon'ble Judges : S.P. Sinha, J;B.S. Sinha, J

Bench : Division Bench

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

Judgement

Sinha, J.

1 . At the instance of the CIT, Bihar, Patna, the Income Tax Appellate Tribunal, Patna Bench " B " (hereinafter referred to as the Appellate Tribunal), has, u/s 256(1) of the I.T. Act, 1961, referred the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that this was not a fit case for imposition of penalty u/s 271(1) (a) of the Income Tax Act ? "

2. The Tribunal has also submitted a statement of case with regard to the aforesaid question.

3. The relevant assessment year was 1963-64. From the statement of the case, as stated by the Tribunal, it appears that the return of income was to be filed by the assessee on the 30th June, 1963, but it was actually filed on 31st January, 1964. Before the ITO the assessee had explained that it had from time to time filed petitions for extension of time for filing the return. The ITO came to the conclusion that the petition for extension of time had for the first time been filed on 4th September, 1963. He, therefore, held that the delay in filing the return

was without reasonable cause and imposed a penalty of Rs. 30,000. Aggrieved by the order, the assessee filed an appeal before the AAC. It was urged before him that the assessee had been filing applications for extension of time up to 30th September, 1963, and thereafter up to 31st December, 1963 (sic), and again till 31st December, 1963. In the meantime, the ITO had issued a notice to the assessee u/s 139(2) of the I.T. Act and the assessee again requested for extension of time till 31st January, 1964. According to the AAC, the ITO had imposed the penalty, because the applications for time filed before him were not in Form 6. The AAC came to the conclusion that this was not a correct approach. He, however, further held that the explanation for filing of the return by the assessee on 31st January, 1964, was not satisfactory and was not for reasonable cause, because the assessee's explanation was that the delay was due to non-completion of the audit of the relevant period. It was only concluded by that time. The AAC also referred to various petitions for time filed by the assessee and according to him the assessee need not have waited for the completion of the audit to file its return, inasmuch as it was not for the auditor to prepare the profit and loss account of the assessee. The AAC also held that the applications filed by the assessee for extension of time appeared to be frivolous and untenable. He, therefore, on the basis of the above conclusions, confirmed the penalty imposed.

4. Before the Tribunal, not only the applications for the extension of time, which related from September 4, 1963, were filed, but for the first time an application, which the assessee had filed on 28th June, 1963, i.e., before the due date, was also referred to. In support of this fact, the assessee filed the original of the petition duly received by the clerk of the department. The plea of the assessee was that as he had been filing various applications for time for filing the returns, which had not been rejected by the ITO, inasmuch as they had not been replied to, the assessee was justified in presuming that its request for time had been accepted. It was also urged before the Tribunal that the delay in filing the return was bona fide, inasmuch as it could not be done earlier, because the audit was not complete. It was pointed out that the audit took such a long time because of circumstances beyond the control of the assessee. In such a situation it was urged that there was a reasonable cause which prevented the assessee from filing the return on the due date.

5. On behalf of the revenue, on the other hand, it was contended that the petition dated 28th June, 1963, was never mentioned before and was not on the record and that, in the circumstances of the case, the penalty imposed was justified.

6. The Tribunal, on a consideration of the materials on the record, came to the conclusion that there was reasonable cause for the delay in the filing of the return by the assessee. In support of this finding which, to my mind, is a finding of fact, the Tribunal gave the following reasons :

(i) That as the assessee's petitions for extension of time had not been rejected

the assessee could presume that time had been granted and it could not be said that he was in default;

(ii) That it was for the department to establish that there was default on the part of the assessee ;

(iii) The AAC had not rejected the fact that accounts were not ready nor did he come to the conclusion that the plea regarding the audit of the accounts was false. All that he had held was that it was not a reasonable cause with which conclusion the Tribunal was not in agreement;

(iv) That though the first petition, i.e., for extension of time dated 28th June, 1963, was not on the record, the later petitions for time had not been replied to by the ITO and, in such circumstances, the Tribunal could not hold that the department had established a case for the imposition of penalty.

7. It is obvious, therefore, that all these were questions of fact and by taking them into consideration, the Tribunal, in disagreement with the ITO and the AAC, has come to the conclusion that the assessee had reasonable cause to file the returns on 30th January, 1964. The finding of the Tribunal is completely based on a consideration of facts. Therefore, the question referred to must be answered in favour of the assessee and against the department.

8. As no one has appeared on behalf of the assessee, there will be no order as to costs.

Sinha, J.

9. I fully agree with my learned brother that the question must be answered in the affirmative, i.e., in favour of the assessee and against the department. The question of onus has been the subject-matter of discussion in various case law, particularly in regard to matters relating to levy of penalty. As for example in the instant case, the assessee failed to file the return by the due date. In such a case, apparently the provision of Section 271(1)(a) got attracted. The question has, therefore, often arisen as to what is required of the department in a case in which apparently a penal provision is attracted. Should the department merely reject the cause shown by the assessee as no cause at all or not a reasonable cause at all, or should it go a little further and give further reasons for such a conclusion with regard to the nature of the cause shown ? I think the question being of levy of penalty, which is necessarily on the basis of a quasi-criminal act of the defaulter, the department must give reasons for its conclusion. For example, in the instant case, the assessee went on telling the ITO as also the AAC its reasons for thinking that its petition for time having neither been rejected nor been accepted, it believed that time for filing the return was extended and yet the departmental authorities merely rejected that explanation of the assessee as not a reasonable explanation for delay in filing the return. As to why it was not reasonable, the department kept silent. Now, that is not the way in which the department is expected to act in these matters, particularly

when it concerns the levy of penalty on an assessee.