
(1967) 07 MAD CK 0057

In the Madras High Court

Case No : Tax Case No. 34 of 1963 (Reference No. 7 of 1963)

Commissioner of Income Tax

APPELLANT

Vs

Rikabdas Chaganraj

RESPONDENT

Date of Decision : 31-07-1967

Acts Referred:

Income Tax Act, 1922 — Section 28(1)

Citation : (1969) 72 ITR 56

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam, for the Appellant; K.R. Ramamani, for the Respondent

Judgement

Veeraswami, J.—We are clearly of opinion that the reference to this court at the instance of the Commissioner of Income Tax should be answered in favour of the assessee. We are concerned with the assessment year 1958-59, the corresponding accounting year having ended on October 23, 1957. The assessee in the relevant year was a firm of partnership carrying on business at Madras. In the course of the assessment proceedings, four credit entries, two in November, 1956, one in February, 1957, and the last in March, 1957, were found entered in the accounts against certain named persons. On each of the corresponding dates of credits, the cash balance in the books was far less than them. The assessee's explanation was that the credits were received from certain businessmen from North India, who came to Madras for making purchases, and, while en route to Pondi-cherry, deposited the sum with the assessee for safe custody. But the assessee failed to furnish the address of the parties. Relying on this fact and the other that the cash balance on each of the dates on which there was credit entry was much less than the deposit received, the Income Tax Officer declined to accept the explanation offered by the assessee and added the sum of Rs. 7,000 as undisclosed income, that being the peak credit, taking into consideration the dates of the credit and the dates of the repayment. Proceedings u/s 28(1)(c) followed, which resulted in the levy of a penalty of Rs. 4,800. The Tribunal,

disagreeing with the revenue, held that the penalty was not justified.

2. In the circumstances, the following question was referred to this court :

" Whether, on the-facts and circumstances of the case, the Appellate Tribunal was right in law in deleting the penalty levied u/s 28(1)(c) ? "

3. In the course of its order, the Tribunal expressed the view that this was merely a case of the explanation of the assessee not being accepted by the department and that in itself would not furnish a justifiable basis for levy of, penalty. In the statement of the case, the Tribunal mentioned that, while it was open to the department to disbelieve the assessee's version and add the amount as undisclosed income, in the penalty proceedings, the onus: was on the revenue to establish that the deposits constituted income of the relevant previous year which it failed to discharge.

4. It is argued before us that once the Income Tax Officer disbelieved or declined to accept the explanation of the assessee as true and determined that, on the basis of the credit entries, a certain amount should be added as undisclosed income, it followed from that finding that, to that extent, the assessee had concealed the particulars of such income or deliberately furnished inaccurate particulars of such income. We do not think that we can accede to such a broad proposition. The gist of the offence u/s 28(1)(c) is concealment of the particulars of the assessee's income or deliberately furnishing inaccurate particulars of such income. The question in each case will be whether there is material to find such a concealment or deliberate furnishing of inaccurate particulars. Where credit entries are found in the account books of the assessee which are not explained by him to the satisfaction of the Income Tax Officer, addition as undisclosed income on the basis of peak credit may well be justified. Such income, when added, is certainly income for the purposes of the Act, and the finding in regard to it resulting in addition is not open to attack on the ground that it is not supported by any material. The material consists of the credit entries and the explanation, the appreciation of which is within the purview of the Income Tax Officer, which will include also probabilities. But the same material which justifies a finding as to addition of income may not, and in this case does not, show or establish the elements which constitute the offence u/s 28(1)(c). A finding in the process of assessment that an explanation offered by an assessee in respect of certain credit entries found in his account books is not acceptable cannot by itself mean that there has also been concealment of the particulars of income or deliberate furnishing of inaccurate particulars of such income. The two things are quite different and distinct. In one case, it is just probable that the explanation is not correct, and in the other, what has to be established is concealment or deliberate giving of false or inaccurate particulars. Commissioner of Income Tax, Ahmedabad Vs. Gokuldas Harivallabhdas, in a similar context, said this :

" Now, the assessee is not charged with having given a false explanation. This is not the gist of the offence u/s 28(1)(c). The gist of the offence u/s 28(1)(c) is

that the assessee concealed the particulars of his income or deliberately furnished inaccurate particulars of such income. Therefore, the department must establish that the receipt of Rs. 15,203 constitutes "income" of the assessee. There is not an iota of evidence on the record except the explanation given by the assessee, which explanation has been found to be false."

5. "We are in agreement with the principle of these observations, that is to say, that a finding of concealment or furnishing of inaccurate particulars cannot be founded merely on the fact that a certain explanation in regard to credits in the account has been offered by an assessee, which the revenue is not prepared to accept. Something more must be established, and that is, that the elements required to constitute an offence u/s 28(1)(c) are present.

6. Mr. V. Balasubrahmanyan, for the revenue, says that the Tribunal misdirected itself in assuming that the onus of establishing the offence u/s 28(1)(c) was always on the department. We do not think it necessary to deal with this proposition on the facts before us. The question of onus will arise only when the evidence on both sides is so evenly balanced that a conclusion can be arrived at only on the basis where the onus lies" and whether it has been discharged. This is not such a case. Apart from that, it should not be lost sight of that Section 28(1)(c) is of a penal character and, initially, it is for the department to establish the offence on proper material. It is suggested that the Income Tax Officer being in a peculiar position, namely, that he is the assessing officer and at the same time is vested with quasi-judicial powers, he may well be justified in expecting the assessee, who has got exclusive knowledge of certain things, to place it before him, and that, looked at from this point of view, the penalty levied in this case could be supported. Here again, we are unable to agree. There may be cases in which, while dealing with the question of onus, the fact of exclusive knowledge of the assessee and his failure to disclose may have a bearing, but that is not to say that any onus lies on the assessee u/s 28(1)(c).

7. We are satisfied that in this case the Tribunal has directed itself properly in law in approaching the material on record and had rightly concluded that the penalty levied on the assessee was not justified.

8. On that view, as we said at the outset, we answer the reference in favour of the assessee. No costs.