

(1998) 02 MAD CK 0046

In the Madras High Court

Case No : Tax Case No. 1674 of 1984 (Reference No. 1199 of 1984)

Commissioner of Income Tax

APPELLANT

Vs

S. Sankaran

RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2000) 241 ITR 825

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; R. Janakiraman, for the Respondent

Judgement

R. Jayasimha Babu, J.—At the instance of the Revenue, the following questions of law have been referred to us by the Income Tax

Appellate Tribunal, Madras Bench "A" :

(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in cancelling the penalty imposed u/s 271(1)(c)

of the Income Tax Act, 1961 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount offered by the assessee for

assessment could not be taken as concealed income and that the asses-see is not guilty of concealment of income ?

2. The assessment year with which we are concerned is 1973-74. The asses-see had filed a return admitting an income of Rs. 11,710. The

assessee had also reported cash deposits ranging from Rs. 3,000 to Rs. 8,000 in the names of three individuals. It was his case that he had

borrowed those amounts from those persons for the purpose of business. He had

also claimed that he paid interest of Rs. 1,490 on those loans.

The Income Tax Officer, after the receipt of the return from the assessee, wrote to him on December 13, 1975, calling upon him to explain the

new credits and to produce the books of account of the business. After the receipt of that letter, the assessee admitted that the amounts shown as

borrowings were to be assessed as part of his income. The assessee's explanation was that it was not possible for him to ascertain the present

whereabouts of those individuals and produce further documentary evidence to establish that those persons have given loans to the assessee. This

prompted the Assessing Officer to hold that the assessee was guilty of concealing this income and proceed to levy a penalty.

3. The penalty so levied was set aside by the Appellate Assistant Commissioner. The Tribunal has upheld the order of the Appellate Assistant

Commissioner. Before the Tribunal, it was contended for the Revenue that the act of the assessee in agreeing to treat the alleged loans as his own

income was sufficient to hold that the assessee had concealed the income. The Tribunal has rightly held that by that single act of the assessee,

without anything more and without any other materials placed by the Department to sustain a finding of concealment, the assessee could not be

regarded as having concealed his income. In our opinion, the Tribunal has rightly held so. "Concealment" involves necessarily the intention to

withhold the truth and to mislead deliberately. It cannot be said that there is concealment even when all the figures had been reported and included

in the assessment and even before any investigation made by the Department had shown prima facie that the assessee had been dishonest in

reporting the income. The inference sought to be drawn by the Income Tax Officer from the admission of the assessee that the amount shown by

him as loan, and that it be treated as part of his income, could not extend any support for holding that there was concealment of income attracting

penalty. The Department had no material with it whatsoever to show that the assessee had acted in a dishonest manner with a view to conceal the

real facts. It was not the case of the Department that those persons are non-existent or that those persons had not advanced the loans. The

assessee, on the other hand, had stated that those persons could not be traced and, therefore, he is not in a position to produce the documentary

evidence to substantiate the statement that the amounts had been obtained by him as loans from them.

4. The Supreme Court in the case of *Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi*, has held

that (headnote) : "from the assessee agreeing to additions to his income, it does not follow that the amount agreed to be added was concealed

income. There may be a hundred and one reasons for such admission, i.e., when the assessee realises the true position, it does not dispute certain

disallowances but that does not absolve the Revenue from proving the mens rea of quasi-criminal offence." The Department had not produced any

materials whatsoever to show that the assessee had intentionally concealed a part of his income. The levy of penalty was, therefore, wholly

uncalled for. Counsel for the Revenue fairly brought to our notice that the decision of this court in *Commissioner of Income Tax Vs. C.J.*

Rathnaswamy, wherein also this court, dealing with the case of addition made to the income on the basis of the agreement of the assessee, held

that in the absence of any materials available with the Department to show that the income had been concealed by the assessee, mere addition to

the income at the instance of the assessee would not warrant a finding of concealment or the levy of penalty.

5. Our answer to the question that has been referred to us is, therefore, in the affirmative and against the Revenue. The assessee shall be entitled to

costs of Rs. 500.