
(1995) 10 MAD CK 0076
In the Madras High Court
Case No : Tax Case No. 217 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Seth Purushothamdas Dwarkadas

RESPONDENT

Date of Decision : 10-10-1995

Acts Referred:

Income Tax Act, 1961 — Section 271(1), 274(2)

Citation : (1996) 221 ITR 304

Hon'ble Judges : K.A. Thanikkachalam, J; Govardhan, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal has referred the following question for our opinion under s. 256(1) of the IT Act, 1961 :

"Whether, on the facts and in the circumstances of the case and having regard to the provisions of s. 274(2) of the IT Act, 1961, the Tribunal was right in holding that the IAC has no jurisdiction to levy penalty under s. 271(1)(c) in the assessee's case on 30th March, 1977, by when the law had been amended divesting him of his jurisdiction and vesting it in the ITO although the proceedings for levy of penalty were initiated and referred to the IAC even before the law had been amended on 1st April, 1976 ?"

2. The assessee, Seth Purushothamdas Dwarkadas, is an individual carrying on business in moneylending. For the asst. yr. 1972-73, he filed a return on 18th May, 1973, admitting an income of Rs. 4,775. Before that, on 24th April, 1972, the intelligence wing of the IT Department raided the house of the assessee and seized pronotes valued at Rs. 67,100, cash amounting to Rs. 39,412 and jewellery worth about Rs. 21,328. The said jewellery were found in the locker belonging to Smt. Parameswaribai, the wife of the assessee. Since the pronotes did not find a place in the accounts maintained by the assessee, he was asked to explain the omission. Since the assessee did not properly explain the same, the

ITO held that the sum represented undisclosed income of the assessee. But, he found that only Rs. 39,000 related to the year in question and accordingly included that amount into consideration. Regarding the cash seized, the ITO added Rs. 36,607, as the assessee's contention that it represented gifts received by his wife during the married life of about 30 years was not substantiated by evidence. As the assessee did not explain properly the source of the jewellery as belonging to the assessee's wife, the ITO included Rs. 18,869 as income for the year 1972-73. A sum of Rs. 18,800 was also added towards income from business. Thus, in all a sum of Rs. 1,13,276 was added to the income of the assessee. The ITO also initiated proceedings under s. 271(1)(c) of the Act and referred the matter to the IAC under s. 274(2) of the Act. On appeal, the AAC deleted the addition made towards unexplained jewellery amounting to Rs. 18,869 and also the income from business carried on in the name of the wife of the assessee in a sum of Rs. 18,800 and a sum of Rs. 11,400 towards seized cash. He, however, confirmed the addition made towards pronotes. The assessee preferred an appeal to the Tribunal against the addition of Rs. 39,000 towards seized pronotes and Rs. 25,207 towards unexplained cash, sustained by the AAC. The Tribunal, on a consideration of the matter, deleted the addition of Rs. 25,207 being unexplained cash as not relating to the year under consideration, but sustained the addition of Rs. 39,000 being the unexplained investment in pronotes as income of the assessee.

The IAC, in the course of penalty proceedings, held that the assessee had concealed the particulars of income and accordingly, he levied a penalty of Rs. 1,28,144 under s. 271(1)(c) on 30th March, 1977, after giving an opportunity to the assessee. On appeal, the Tribunal found that out of the additions made, the only addition which was sustained by the Tribunal was the sum of Rs. 39,000 being the unexplained investment in pronotes, and it held that penalty is clearly exigible in respect of that sum. However, the Tribunal held that the IAC had no jurisdiction to levy penalty after 1st April, 1976, in view of the amended provisions of law by the Taxation Laws (Amendment) Act, 1975, and that, therefore, the penalty has to be cancelled. Accordingly, the Tribunal cancelled the penalty levied. In order to come to its conclusion, the Tribunal relied upon the decision of the Karnataka High Court in the case of R. Abdul Azeez Vs. Commissioner of Income Tax, Karnataka-I, and the decision in Joseph John vs. ITO (I. T. A. Nos. 40 and 41 of 1977-78 dt. 1st March, 1980). But, on the merits, the Tribunal held that the penalty is exigible because of the behaviour of the assessee before the Department.

3. Learned standing counsel for the Department submitted that the Tribunal was not correct in holding that the IAC has no jurisdiction to levy penalty in this case. According to him, at the time when the matter was referred to the IAC by the ITO s. 274(2) of the Act was not amended and that, therefore, the IAC has got jurisdiction to complete the penalty proceedings, even though the order was passed on 30th March, 1977, i.e., after the amendment came into force. In support of such contention, learned counsel for the Department relied upon the

decisions in Commissioner of Income Tax, Orissa Vs. Dhadi Sahu, and Varkey Chacko Vs. Commissioner of Income Tax, . On the other hand, learned counsel for the assessee supported the order passed by the Tribunal in canceling the penalty on the question of jurisdiction.

4. The fact remains that the assessment was completed. The ITO initiated proceedings under s. 271(1)(c) of the Act, as there was concealment and furnishing of inaccurate particulars and referred the matter to the IAC under s. 274(2) of the Act. Sec. 274(2) of the Act was deleted from the statute book by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1st April, 1976. It is an admitted fact that on the date on which the matter was referred to the IAC s. 274(2) was in the statute book, but before the order was passed by the IAC, the said amendment to the Act came into force. According to the amendment, after 1st April, 1976, the IAC has no jurisdiction to levy penalty under s. 271(1)(c) of the Act even if the concealed income is more than Rs. 25,000. The question that arises for consideration is, whether the IAC can complete the penalty proceedings and levy penalty under s. 271(1)(c) of the Act, after the coming into force of the amending Act, even though the reference was made by the ITO earlier to the amendment. A similar question came up for consideration before the Supreme Court in CIT vs. Dhadi Sahu (supra). The Supreme Court, while considering the provisions of law on this aspect, relating to Taxation Laws (Amendment) Act, 1970, held that reference of the case was validly made by the ITO before 1st April, 1971, and the IAC validly acquired jurisdiction to pass the orders imposing penalty. The amending Act did not make any provision that references validly pending before the IAC should be returned without any final order being passed. The previous operation of s. 274(2) as it stood prior to 1st April, 1971, and anything done thereunder continued to have effect under s. 6(b) of the General Clauses Act, 1897, enabling the IAC to pass orders imposing penalty in pending references. What was material to be seen was as to when the reference was initiated. If the reference was made before 1st April, 1971, it would be governed by s. 274(2) as it stood before that date and the IAC would have jurisdiction to pass the order of penalty. Again in Varkey Chacko vs. CIT (supra), the Supreme Court, while considering the same question, held that the authority to impose such penalty as is permissible under the law in that behalf is the one, who is obliged to impose such penalty on the date on which the offence of concealment was committed. In deciding that question, the Supreme Court relied upon its earlier decision in CIT vs. Dhadi Sahu (supra). In view of the aforesaid decisions of the Supreme Court, we hold that the Tribunal was not correct in coming to the conclusion that the IAC in the present case has got no jurisdiction, to pass an order levying penalty under s. 271(1)(c) of the Act on 30th March, 1977. In that view of the matter, we answer the question referred to us in the negative and in favour of the Department.

5. However, learned counsel for the assessee submitted that inasmuch as this Court came to the conclusion that the Tribunal was not correct in cancelling the penalty on the question of jurisdiction, a direction should be given to the Tribunal

to dispose of the penalty appeal on the merits. While considering the question of penalty on the merits, the Tribunal has stated as under :

"Even though we are convinced the assessee is guilty of concealment of income because of the way he behaved with the Department, while offering explanation for the source, this penalty perhaps cannot be sustained on a legal ground."

6. It is, however, pertinent to point out here that the assessee has not filed any reference application against the levy of penalty on the merits. Learned counsel for the assessee submitted that inasmuch as the assessee had succeeded before the Tribunal, he is not in a position to file any reference application. However, it must be pointed out that the assessee could have preferred a cross-question in the reference application filed by the Department before the Tribunal. Admittedly, that was not done in this case. In view of the above legal position, we are unable to accede to the request made by learned counsel for the assessee to direct the Tribunal to dispose of the penalty appeal on the merits. There will be no order as to costs.