

(1998) 07 KL CK 0048

In the High Court Of Kerala

Case No : Income-tax Reference No's. 150 of 1995 and 21 to 26 and 115 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Smt. P.M. Celine

RESPONDENT

Date of Decision : 08-07-1998

Acts Referred:

Income Tax Act, 1961 — Section 271(1), 273

Citation : (1999) 236 ITR 988

Hon'ble Judges : Om Prakash, C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair and Dale P. Kurian, for the Respondent

Judgement

1.As directed by this court u/s 256(2) of the Income Tax Act, 1961 (briefly "the Act"), the Income Tax Appellate Tribunal referred the following questions for the opinion of this court at the instance of the Revenue for the consecutive assessment years 1983-84 to 1986-87 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty imposed on the assessee under Sections 271(1) (a) and 273(1)(b) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to the benefit of the amnesty scheme ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that satisfaction of the Income Tax Officer was not there for the penalty proceedings ?"

2. Returns for all these years became due on July 31, of each assessment year. The assessee had filed the returns for the consecutive assessment years 1983-84 to 1985-86 on February 25, 1987, and return for the assessment year 1986-87

was filed on March 6, 1987. The Assessing Officer took the view that the returns were filed belatedly and, therefore, he levied penalty for all the assessment years u/s 271(1)(a) of the Act. He also levied penalty u/s 273(1)(b) for not having furnished a statement of advance tax. Penalties under Sections 271(1)(a) and 273(1)(b) were levied as under :

"Assessment year Penalty levied u/s 271(1)(a) Penalty levied u/s 273(1)(b)

(Rs.) (Rs.)

1983-84 49,720 4,446

1984-85 41,327 5,166

1985-86 28,218 5,879

1986-87 20,985 11,242"

3. The contention of the assessee before the Assessing Officer was that returns for all the years were filed under the amnesty scheme and, therefore, penalty proceedings be dropped. The Assessing Officer was of the view that the amnesty scheme would apply only if returns were filed voluntarily and in good faith making true and full disclosure. He held that the returns were not filed voluntarily, inasmuch as a raid was conducted on the premises of her husband on January 8, 1987, and that returns were filed only thereafter. The case of the assessee that she filed returns voluntarily to explain her own investments ; that the income disclosed for the assessment years 1984-85 and 1985-86 was accepted as such ; that the search was conducted only in the case of the husband ; that no proceedings were taken up for concealment u/s 271(1)(c) of the Act and, therefore, the returns filed for all the years should be held to have been filed voluntarily and in good faith, was not accepted by the Assessing Officer.

4. On appeal, the Commissioner of Income Tax (Appeals) concurred with the Assessing Officer that the assessee was not entitled to the benefit of the amnesty scheme, inasmuch as the returns were not filed voluntarily and in good faith making true and full disclosure. He also rejected the contention of the assessee that no satisfaction was recorded by the Assessing Officer to initiate penalty proceedings under Sections 271(1)(a) and 273(1)(b) of the Act and, therefore, the penalties levied by the Assessing Officer were not sustainable. Aggrieved the assessee approached the Income Tax Appellate Tribunal against the two sets of orders levying penalties under Sections 271(1)(a) and 273(1)(b) of the Act. The Appellate Tribunal accepted the case of the assessee that the penalties levied under Sections 271(1)(a) and 273(1)(b) of the Act were liable to be quashed, inasmuch as the returns were filed by the assessee under the amnesty scheme. Also the Appellate Tribunal accepted the contention of the assessee that the penalties were levied under both the sections without recording the legal satisfaction by the Assessing Officer.

5. To come to the conclusion that all the returns were filed by the assessee under

the amnesty scheme, the Tribunal found as under :

"In this case, the assessee had filed the returns and felt that she had filed the returns voluntarily and in good faith and had made a full and true disclosure of her income. In fact, the income returned were accepted as such in the assessment years 1984-85 and 1985-86. Only in the assessment years 1983-84 and 1986-87 the incomes assessed were higher than the income returned. But, as held by the Andhra Pradesh High Court in the decision reported in Seetha Mahalakshmi Rice and Groundnut Oil Mill Contractors Co. Vs. Commissioner of Income Tax, , the mere fact that the incomes disclosed have not been accepted by the Income Tax Officer would not disentitle the assessee from the immunity under the amnesty scheme. Further, enquiries and search were conducted in the case of the assessee's husband and the departmental representative's contention was that voluntariness was absent in the filing of the returns by the assessee. But the Kerala High Court in the case of A.V. Joy, Alukkas Jewellery Vs. Commissioner of Income Tax and Others, , held that merely because the returns were filed after the search, they will not cease to be a voluntary or a bona fide disclosure. In these circumstances, we hold that the immunity under the amnesty scheme is clearly available to the assessee and the penalties are not at all leviable."

6. On the count of satisfaction, the Appellate Tribunal held as under :

"In this case, the Assessing Officer has not recorded his satisfaction in the assessment orders about the initiation of proceedings under Sections 271(1)(a) and 273(1)(b). This is an admitted position. Even in the order sheets also there is no recording of the said satisfaction by the Income Tax Officer in respect of the said offences committed by the assessee in the matter of failure to file the return and failure to file advance tax statement/estimate. In the order-sheets the U.D.C. simply stated the total income and computed the tax and the interest payable under Sections 139(8) and 217. Under the said computations it was written as under :

"Asst. Order, D. N. Chalan, 271(1)(a) and 271(b) penalty notices put up."

At the bottom of the said noting by the U.D.C. the U.D.C. signed and put the date October 30, 1987. The Income Tax Officer had not even signed or initialled therein. This clearly shows that the satisfaction was recorded by the U.D.C. only and the satisfaction of the Income Tax Officer was not at all there. In fact, the issuance of the said penalty notices was not even under the directions of the Income Tax Officer in the assessment orders. No such direction also can be seen in the order sheets, photostat copies of which are filed before us ... In this case we are satisfied that the satisfaction of the Income Tax Officer was not there for launching of the penalty proceedings. Hence, the penalties levied are liable to be quashed."

7. We first take up question No. 3, referred to us for opinion. The question for consideration is whether the Tribunal was right in concluding that no satisfaction,

as required under the law, was recorded by the Assessing Officer to initiate the penalties under Sections 271(1)(a) and 273(1)(b) of the Act. Admittedly, the penalty proceedings were not initiated in the assessment orders. It is not the case of the Revenue that penalty proceedings were initiated either in the order sheet or in the rest of the file relating to the assessment years under review. Learned senior standing counsel submits before us that notices bearing initials of the Assessing Officer were issued on the same day when the assessments were made and, therefore, it be assumed from them that the Assessing Officer had recorded the requisite satisfaction. The notices were issued on printed forms. The question for consideration is whether the satisfaction required under the law can be inferred from the mere fact that the notices bearing initials of the Assessing Officer were issued on the day when the assessments had been made.

8. In *D.M. Manasvi Vs. Commissioner of Income Tax, Gujarat, II Ahmedabad*, , the Supreme Court enunciated as under (headnote) :

"What is contemplated by Section 271(1) is that the Income Tax Officer should have been satisfied in the course of assessment proceedings regarding matters mentioned in the clauses of that Sub-section. It is not essential that the notice to the person proceeded against should have also been issued during the course of the assessment proceedings. Satisfaction, in the very nature of things, precedes the issue of notice and it would not be correct to equate the satisfaction of the Income Tax Officer with the actual issue of notice." (emphasis* supplied)

9. From the above reproduced rule, it is amply clear that the satisfaction should precede the issue of notice. Therefore, no legal satisfaction can be inferred from the mere issue of notice. A notice can be issued only after the satisfaction having been recorded. To sustain the penalties, the Revenue should successfully show that satisfaction was recorded in the course of proceedings and pursuant to that, notices were issued. Learned senior standing counsel is proceeding in the reverse way in these cases, inasmuch as he urges that satisfaction purportedly recorded by the Assessing Officer, be inferred from the issuance of notice and from the purports of the printed forms. The printed material of the notice refers to satisfaction of the Assessing Officer and, therefore, the submission of learned senior standing counsel is that the satisfaction was recorded on the same day when the assessments were made. It is not the day or the point of time of issuing notices which is relevant, but what is relevant is whether the satisfaction, if any, recorded by the Assessing Officer, preceded the issue of notice. The Revenue has miserably failed to establish that satisfaction preceded the issue of notice in these cases. We do not dispute the legal proposition that it is not necessary to record the satisfaction in the assessment order itself, but the duty of the Revenue is to show that the satisfaction was duly recorded and that preceded the issue of notice. This onus cannot be discharged by the Revenue by showing that the notice had been issued on the day of the assessment.

10. We are firmly of the view that in these cases no valid satisfaction preceding the issue of notice was recorded by the Assessing Officer and hence the

Appellate Tribunal was right in holding that the penalties levied under both the sections are liable to be quashed and this being so, we do not enter into the other factual aspects of the case whether the returns were filed by the assessee under the amnesty scheme voluntarily and in good faith making true and full disclosure.

11. In the result, we answer question No. 3 in the affirmative, that is, in favour of the assessee and against the Revenue and do not consider it necessary to answer questions Nos. 1 and 2, which are returned unanswered.