

(1982) 09 AHC CK 0033

In the Allahabad High Court

Case No : Income-tax Reference No. 241 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Sohan Lal

RESPONDENT

Date of Decision : 22-09-1982

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Income Tax Act, 1961 — Section 271(1)

Income Tax Act, 1961 — Section 271(1)

Citation : (1983) 37 CTR 220 : (1983) 143 ITR 901 : (1983) 12 TAXMAN 91

Hon'ble Judges : R.B. Lal, J;K.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; K.B. Jindal, for the Respondent

Judgement

R.B. Lal, J.—The Income Tax Appellate Tribunal, Allahabad Bench, has referred the following questions u/s 256(2) of the I.T. Act, 1961 (briefly " the Act "), for the opinion of this court:

" 1. Whether, on the facts and in the circumstances of the case, was the Tribunal legally correct in holding that the Explanation to Section 271(1)(c) could not be invoked even though it was canvassed by the departmental representative ?

2. Whether, on the facts and in the circumstances of the case, was the Tribunal legally correct in ignoring the Explanation to Section 271(1)(c) which formed part of the section ?

3. Whether, on the facts and in the circumstances of the case, in view of Section 139(1) read with Section 64(1)(ii) and footnote 2 of the prescribed form of return, was the assessee guilty of concealment of his income or furnishing inaccurate particulars of income in not showing the share income of his minor son, Pawan Kumar, from the firm in which the assessee was a partner ?

4. Whether, on the facts and in the circumstances of the case, was the Tribunal legally correct in cancelling penalty of Rs. 20,000 imposed by the IAC u/s 271(1)

(c) of the I.T. Act, 1961 ? "

2. The material facts lie in a short compass. Sri Sohan Lal filed an Income Tax return for the assessment year 1965-66, but did not include the income received by his minor son, Pawan Kumar, in that return. The minor had been admitted to the benefits of the partnership in the firm in which the assessee, Sohan Lal, was also a partner. Penalty proceedings were initiated against the assessee for concealing the income of the minor. The IAC found the assessee guilty and imposed a penalty of Rs. 20,000 u/s 271(1)(c) of the Act. The assessee appealed to the Tribunal, and the Tribunal relying on the decision, CIT v. Smt. Rani Duleiya [1972] 84 ITR 770 , held that there was no obligation on the assessee either u/s 64 or Section 139 of the Act to disclose the income of her minor sons from admission to the benefits of the partnership, in her return. The Tribunal set aside the order of penalty.

3. We have heard learned counsel for the parties at some length. The learned counsel for the assessee has placed reliance on the decision in Commissioner of Income Tax, Kerala Vs. Smt. P.K. Kochammu Amma Peroke, , and urged that in view of this decision the conclusion arrived at by the Tribunal was correct. The learned counsel for the Revenue has, on the other hand, urged that this decision of the Supreme Court helps the Revenue and the questions referred to this court should be answered in favour of the Revenue.

4. In Kochammu Amma's case, the assessee had filed the Income Tax return for the assessment year 1964-65. She had shown her income received from a partnership firm, but she did not disclose the income received by her husband and minor daughter from that firm. It was held that the assessee had concealed the income and penalty was imposed on her u/s 271(1)(c) of the Act. The Tribunal set aside the order of penalty. On the application of the Commissioner, the Tribunal, referred a question of law for the opinion of the High Court. The High Court answered the question in favour of the assessee and against the Revenue. The Commissioner appealed to the Supreme Court. The appeal was heard by a Bench of two hon"ble judges. Their Lordships considered the form of Income Tax return which had a note requiring the assessee to show in the return all the income which was liable to be included in the total income of the assessee. Their Lordships also considered the provisions of Sections 2(45), 4, 5, 64(1)(i), (ii) and (iii) and 139(1) of the Act and took the view that the assessee was bound to show in her return the amounts representing the shares of her husband and minor child in the two partnership firms and in failing to do so, she was guilty of concealment of this item of income u/s 271(1)(c) of the Act. They also observed that it was difficult to see how the note in the prescribed form of the return could be ignored by the assessee and how she could contend that despite the note she was not liable to show in her return the amounts representing the shares of her husband and minor daughter in the two partnership firms. After expressing this view their Lordships took note of an earlier decision of the Supreme Court in V.D.M.R.M.M.R.M. Muthiah Chettiar Vs.

Commissioner of Income Tax, Madras, , where a different view had been taken by a Bench of three hon"ble judges. In that decision it was held that even if there were any printed instructions in the form of the return requiring the assessee to disclose the income received by his wife and minor child from a firm in which the assessee was a partner, there was, in the absence in the return of any head under which the income of the wife or minor child could be shown, no obligation on the assessee to disclose this item of income, and the assessee could not be deemed to have failed or omitted to disclose fully and truly all material facts necessary for his assessment within the meaning of Section 34(1) (a) of the Indian I.T. Act, 1922. Their Lordships observed that in their view the earlier decision did not lay down the correct law on the subject, but they refrained from referring the matter to a larger Bench because the form of the Income Tax return had been changed from 1st April, 1972, and a separate column had been provided for showing the "income arising to spouse, minor child or any other person, as referred to in Chap. V of the Act ", and the question had thus become only academic.

5. Though in Commissioner of Income Tax, Kerala Vs. Smt. P.K. Kochammu Amma Peroke, , their Lordships took a different view, the earlier decision in V.D.M.R.M.M.R.M. Muthiah Chettiar Vs. Commissioner of Income Tax, Madras, , which has not been overruled by a larger Bench, is, in our view, to be taken as good law and binding so far as the cases in which old forms of Income Tax return, before its amendment from 1st April, 1972, were submitted are concerned. Muthiah Chettiar's case was under the provisions of the Indian I.T. Act of 1922, but the relevant provisions of that Act were substantially the same as the provisions of Sections 2(45), 4, 5, 64(1)(i), (ii), (iii), 139(1) and 271(1)(c) of the Act. Hence the principles laid down in Muthiah Chettiar's case would be applicable to the instant case in which the question of imposition of penalty in respect of the concealment of income for the assessment year 1965 66 is involved. Before us it is not the case of the Revenue that there was a separate column in the return for the assessment year 1965-66, requiring that the income arising to spouse or minor child be shown in the return. There was a footnote which required mention of such income.

6. In view of the principles laid down in V.D.M.R.M.M.R.M. Muthiah Chettiar Vs. Commissioner of Income Tax, Madras, , the answer to question No. 3 must be in the negative, and the answer to question No. 4 must be in the affirmative. Both these answers should be in favour of the assessee and against the Revenue,

7. In view of the grounds on which questions Nos. 3 and 4 have been answered, questions Nos. 1 and 2 become academic and it is not necessary to answer them.

8. Our answers to the questions referred are as follows :

Question No. 3 :

9. The answer is in the negative, in favour of the assessee and against the Revenue.

Question No. 4 :

10. The answer is in the affirmative, in favour of the assessee and against the Revenue.

Questions Nos. 1 and 2 :

11. It is not necessary to answer these questions in this case. These questions are merely academic in this case and are returned unanswered.

12. The assessee shall get costs which we assess at Rs. 250.