
(1989) 12 CAL CK 0015

In the Calcutta High Court

Case No : Income-tax Reference No. 428 of 1980

COMMISSIONER OF Income Tax

APPELLANT

Vs

SUMATI KUMAR SUNIL KUMAR.

RESPONDENT

Date of Decision : 20-12-1989

Acts Referred:

Income Tax Act, 1961 — Section 73

Voluntary Disclosure of Income and Wealth Act, 1976 — Section 14(1)

Citation : (1992) 94 CTR 221 : (1991) 94 CTR 221 : (1992) 193 ITR 537 :
(1991) 54 TAXMAN 239

Hon'ble Judges : Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench : Full Bench

Judgement

SUHAS CHANDRA SEN J. - The Tribunal has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 ("the Act") :

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that, in the income disclosed under the Voluntary Disclosure Scheme, 1975, the speculation loss should be set off against the other income of the assessee notwithstanding the prohibition contained in section 73(1) of the Income Tax Act, 1961 ?"

The assessment years involved are 1971-72 and 1972-73 for which the relevant years of account were years ending October 28, 1970, and October 17, 1971.

The facts as narrated by the Tribunal in the statement of case are as under.

The respondent-assessee is Sumati Kumar Sunil Kumar, a partnership firm, the concerned assessment years being 1971-72 and 1972-73. The material facts which are common to both the years are that there was a search and seizure in the case of the assessee on June 12, 1973. The original assessment for 1971-72 was made on March 19, 1974, on a total income of Rs. 25,913 and the original assessment for 1972-73 was made on February 25, 1975, on a total income of Rs. 28,000. The documents seized during the search and seizure operation were

under scrutiny. On December 30, 1975, the assessee made a disclosure u/s 14(1) of the Voluntary Disclosure of Income and Wealth Ordinance, 1975. In the said disclosure petition, the assessee disclosed concealed income of Rs. 6,16,000 for the assessment year 1971-72 and Rs. 4,73,000 for the assessment year 1972-73. Both the assessments for 1971-72 and 1972-73 were, thereupon, reopened u/s 147 of the Act and proceedings were initiated by issue of notices u/s 148 of the Act in order to bring under assessment the concealed income which was detected by the Department in the course of search and seizure. In the course of assessment proceedings, the Income Tax Officer found that, for the assessment year 1971-72, the income of Rs. 6,16,000 disclosed by the assessee u/s 11(1) of the Act was made up as below :

Rs.

Income from jute business carried on in various benami names

7,08,146

Loss in speculation business

92,146

6,16,000

For the assessment year 1972-73, the income of Rs. 4,73,000 disclosed by the assessee was made up as below :

Rs.

Income from jute business carried on in various benami names

5,33,846

Loss in speculation business

60,846

4,73,000

The Income Tax Officer determined the assessee's income from jute business at Rs. 7,08,146 for the assessment year 1971-72 and at Rs. 5,33,846 for the assessment year 1972-73. He did not allow set off of the speculation loss in determining the assessee's income from business.

The Appellate Assistant Commissioner, on appeal, rejected the assessee's contention that, under the Voluntary Disclosure of Income and Wealth Ordinance, 1975, the Income Tax Officer was bound to accept the net amount of concealed income as declared by the assessee and that he was not justified in making any adjustment thereto. The Appellate Assistant Commissioner was of the view that speculation losses had to be considered separately under the Act and had to be excluded for the correct computation of income of the assessee.

In the second appeal that followed, the Tribunal accepted the assessee's stand in this behalf. Broadly stated, the reasoning of the Tribunal was that as there was no reference or mention in the charging section 3, the special concepts in the Act, as for example, speculation loss, could not be imported into the proceedings arising out of the Voluntary Disclosure of Income and Wealth Ordinance.

The question is whether the Wealth-tax Officer is entitled to disallow speculation loss in a case of voluntary disclosure even though the assessee had deducted such loss from its business income. Under the provisions of the Act, loss incurred in speculation business cannot be set off against the business income of an assessee.

The contention made on behalf of the assessee is two-fold. Firstly, it is argued that the scheme of voluntary disclosure of income is quite different from the scheme of the Act. Nothing prevents the assessee from deducting speculation loss from business income in a case of voluntary disclosure of income.

Next, it has been contended that, under the scheme of the Voluntary Disclosure of Income and Wealth Ordinance, the Income Tax Officer cannot go behind what has actually been disclosed by the assessee as its net income. The Income Tax Officer has to accept whatever has been disclosed voluntarily as the concealed income of an assessee. The Income Tax Officer cannot go behind the figures disclosed by the assessee.

I am unable to uphold these arguments for two reasons. The Voluntary Disclosure of Income and Wealth Ordinance, 1975, imposes a charge of Income Tax on voluntarily disclosed income made within the period mentioned in the Ordinance "in respect of any income chargeable to tax under the Indian Income Tax Act, 1922, or the Income Tax Act for any assessment year". It enables the assessee to disclose income which was otherwise chargeable to tax under the Act, but was not brought to tax because the income was not disclosed at the time of the assessment. Three types of concealment of income have been mentioned in the charging section 3 which are as under :

- (a) income for which the assessee has failed to furnish return u/s 139; or
- (b) income which the assessee has failed to disclose in the return of income furnished by him under Act, before the date of commencement of the Voluntary Disclosure of Income and Wealth Act, 1976; or
- (c) Income which had escaped assessment by reason of the omission or failure on the part of an assessee to make a return under the Indian Income Tax Act, 1922, or the Income Tax Act, 1961, or to disclose fully and truly all facts necessary for its assessment or otherwise.

Under the scheme of the Act, the income voluntarily disclosed was to be charged at the rate or rates specified in the Schedule to the Act.

The benefits that an assessee derived from such disclosure were that (i) the

amount of the voluntarily disclosed income was not to be included in the total income of the declarant for any assessment year under the Indian Income Tax Act, 1922, or the Income Tax Act, 1961, or the Excess Profits Tax Act, 1940, or the Business Profits Tax Act, 1947, or the Super Profits Tax Act, 1963, or the Companies (Profits) Surtax Act, 1964; (ii) nothing contained in any declaration under the Scheme was admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty or for the purpose of prosecution under the various Acts mentioned hereinabove including the Wealth-tax Act; (iii) all particulars contained in a declaration were to be treated as confidential and (iv) where the voluntarily disclosed income was represented by cash including bank deposits, bullion, investment in shares, debts due from other persons, then the declared assets would not be included in the net wealth of the assessee for the said assessment year or years.

Section 14 of the Act makes special provisions for disclosure of income in cases of search and seizure made u/s 132 of the Income Tax Act, or section 37A of the Wealth-tax Act. u/s 14, where any books of account, other documents, money, bullion, jewellery or other valuable articles or things belonging to any person have been seized, then that person may make a declaration in respect of any income relating to the previous year in which such search was made or any earlier previous year. Sub-section (2) of section 14 lays down that the declaration has to be made to the Commissioner and "shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Board". Sub-sections (4) and (5) of section 14 of the Voluntary Disclosure of Income and Wealth Act, 1976, provide as follows (See [1976] 102 ITR 54) :

"14. Disclosure of income in cases of search and seizure. -

(4) A copy of the declaration made by the declarant under sub-section (1) shall be forwarded by the Commissioner to the Income Tax Officer and the information contained therein may be taken into account for the purposes of the proceedings relating to assessment or reassessment of the income of the declarant under the provisions of any of the Acts mentioned in sub-section (1) of section 8 or the Wealth-tax Act.

(5) The immunity provided under sub-section (1) shall not be available to the declarant unless the tax chargeable in respect of the income of the previous year or years for which the declaration has been made is paid by the declarant in accordance with the provisions of section 5."

Therefore, the concept of income chargeable to tax in the Voluntary Disclosure Scheme is the same as in the Act. If chargeable income is disclosed by an assessee voluntarily, that will have to be taxed in its entirety.

The second reason why I am unable to uphold the contention of the assessee is that sub-section (4) of section 14 lays down that a copy of the declaration made shall be forwarded by the Commissioner to the Income Tax Officer and the "information contained therein may be taken into account for the purpose of the

proceedings relating to assessment or reassessment of the income of the declarant under the provisions of any of the Acts mentioned in sub-section (1) of section 8 or the Wealth-tax Act". Therefore, what has been declared must be taken into account in making assessment or reassessment of income under the Income Tax Act. While taking into account the business income of Rs. 7,08,146 disclosed by the assessee, the Income Tax Officer finds that a deduction has been sought to be made of speculative loss from such business income. The Income Tax Officer will have to take into account not only the entire amount of the income disclosed but also the loss sought to be deducted. If such deduction is not permissible in law, the Income Tax Officer has no option but to delete such deduction. I am of the view that the Income Tax Officer has approached the problem correctly and that the Tribunal fell into an error in holding that the speculation loss should be set off against the business income of the assessee notwithstanding the provisions of the Act.

On behalf of the assessee, I was referred to the cases of Laherchand Dhanji Vs. Union of India and others, and D.M. Chinnapapaiah Setty Vs. Commissioner of Income Tax, Karnataka, . Neither of these two cases throws any light on the controversy that has been raised in the instant case.

The question, therefore, is answered in the negative and in favour of the Revenue.

There will be no order as to costs.

BHAGABATI PRASAD BANERJEE J. - I agree.