(2001) 09 GUJ CK 0051

In the Gujarat High Court

Case No : Income-tax Reference No. 34 of 1986

Commissioner of Income Tax APPELLANT

Vs

Textile and General Engineer Co. RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:
Income Tax Act, 1961 — Section 271(1)

Citation : (2003) 259 ITR 735

Hon'ble Judges : M.S. Shah, J;D.A. Mehta, J

Bench : Division Bench

Advocate : B.B. Naik, for R.P. Bhatt, for the Appellant; H.M. Talati, for the Respondent

Judgement

D.A. Mehta, J.—In compliance with the directions issued by this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Ahmedabad Bench "A", has raised and referred the following four questions for the opinion of this court :

"(i) Whether, the Tribunal has been right in law in confirming the view taken by the Appellate Assistant Commissioner in deleting the penalty imposed by the Income Tax Officer u/s 271(1)(a) of the Income Tax Act, 1961 ?

(ii) Whether the finding of the Tribunal that on completion of assessment in the status of a registered firm the assessee was entitled to a refund and hence no penalty was leviable, is correct in law ?

(iii) Whether the Tribunal was right in law in distinguishing the judgment in the case of Commissioner of Income Tax, Gujarat Vs. R. Ochhavlal and Co., , wherein it was clearly held that when a registered firm commits a default, the provisions of Section 271(2) of the Income Tax Act, 1961, would come into play?

(iv) Whether, on the facts and circumstances of the case, justified deletion of the penalty imposed by the Income Tax Officer u/s 271(1)(a) of the Income Tax Act, 1961 ?"

2. The assessment years in question are 1976-77 to 1979-80. The assessee is a registered firm. For the four assessment years in question, the returns were admittedly filed belatedly. The Income Tax Officer levied penalties for all the four assessment years u/s 271(1)(a) of the Act. The assessee approached the Appellate Assistant Commissioner against the aforesaid orders levying the penalties and the Appellate Assistant Commissioner allowed the appeals.

3. The reasons which weighed with the Appellate Assistant Commissioner were firstly, that the Income Tax Officer had not waited for the reply from the assessee because admittedly at least for the first two years, the notices calling for replies had been received by the assessee on the date on which the penalty orders had been framed. Secondly, the assessee had applied for extension of time and the said period had not been taken into consideration while computing the period of default. Thirdly, as the entire tax had been paid by way of tax deducted at source from contract payments, the assessee became entitled to refunds for all the years and this fact was verifiable from the assessment orders. In view of these circumstances, the Appellate Assistant Commissioner deleted the penalties imposed by the Income Tax Officer.

4. The Revenue preferred the appeal before the Tribunal and the Tribunal confirmed the view of the Appellate Assistant Commissioner on the facts found by him. The Tribunal further held that there was divergence of judicial opinion in regard to imposition of penalty of a registered firm when there was refund due to an assessee in the status on a registered firm. In view of this position, the Tribunal relied upon the decision of The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., , wherein it was laid down by the apex court that levy of penalty was not justified particularly when two views were possible with regard to the provisions relating to imposition of penalty. The Tribunal, thus, upheld the view of the Appellate Assistant Commissioner. The Revenue has preferred the aforesaid reference against the order of the Tribunal.

5. We have heard Mr. B. B. Naik, learned standing counsel appearing on behalf of the applicant-Revenue, and Shri H. M. Talati, the learned advocate appearing on behalf of the respondent-assessee.

6. The Tribunal''s order, as can be seen from the statement of case, falls in two parts. In the first part, the Tribunal has found on the facts after appreciating the evidence on record that (i) the Income Tax Officer had completed the penalty proceedings without waiting for the reply to the show cause notices issued by him and he was not justified in doing so ; (ii) the main stay of the Department''s case was that in the light of considerable delay in filing the return, it was open to the Revenue to assume the default and further infer that the assessee had failed to discharge its statutory obligation--this approach was not approved by the Tribunal. The reasons which weighed with the Tribunal were that the assessee as a registered firm was entitled to refund, and by delaying the filing of the return, the assessee had caused prejudice to its own cause rather than the interest of the Revenue. In so far as the second part of the Tribunal''s order is concerned, it

refers to a decision in the case of Commissioner of Income Tax, Gujarat Vs. R. Ochhavlal and Co., as well as the decision of the Gauhati High Court in the case of Commissioner of Income Tax, Etc. Vs. Maskara Tea Estate, , and observed that the judicial opinion as regards imposition of penalty by invoking the provisions of Section 271(2) of the Act was sharply divided. The Tribunal, therefore, relised upon the ratio laid down by the apex court in the case of The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., and held that the Appellate Assistant Commissioner had rightly deleted the penalty.

7. Mr. Naik vehemently contended that the finding recorded by the Tribunal that the Income Tax Officer had completed penalty proceedings without waiting for the assessee''s reply is incorrect as can be seen from the penalty order for the assessment year 1977-78. He, therefore, urged that as the Tribunal''s finding was against the record we should not accept the same and it was open to interfere even in relation to such factual finding.

8. We have gone through the penalty order for the assessment year 1977-78 and find that the Assessing Officer had referred to the assessee''s letter dated January 24, 1983. As can be seen from the facts recorded in the statement of case (page 2), the said reply was filed for the assessment years 1978-79 and 1979-80. Therefore, without entering into the aspect whether the court can overturn the Tribunal''s finding of fact, we prefer to adopt the concurrent findings of fact recorded by both the appellate authorities.

9. We, therefore, hold that the Tribunal was justified in deleting the penalty imposed by the Income Tax Officer u/s 271(1)(a) of the Act. Questions Nos. 1 and 4 are, therefore, answered in the affirmative, i.e., in favour of the assessee and against the Revenue.

10. Our attention was drawn by Mr. Naik to the following two decisions of this court :

(i) CIT v. Damjibhai and Brothers and (ii) CIT v. Jashbhai Motibhai and Co. (I. T. R. No. 205 of 1975 decided on February 26, 1979).

11. In light of the ratio of the aforesaid two decisions, we hold that the Tribunal was not justified in holding that merely because on completion of assessment of the assessee in the status of a registered firm a refund was due to the assessee no penalty was leviable.

12. Questions Nos. 2 and 3 are, therefore, answered in the negative, i.e., in favour of the Revenue and against the assessee.

13. Before parting, we may refer to the decision in the case of CIT v. Damjibhai and Brothers, wherein this court has laid down in the following words :

"The assessee-firm would incur a liability provided there is no reasonable cause which prevented it from filing the return in time."

14. Applying the aforesaid ratio, we have answered questions Nos. 1 and 4

hereinbefore.

15. The reference stands disposed of accordingly with no order as to costs.

