

(1998) 03 MAD CK 0128

In the Madras High Court

Case No : Tax Case No"s. 761 and 762 of 1982 (Reference No"s. 498 and 499 of 1982)

Commissioner of Income Tax

APPELLANT

Vs

Traders and Traders

RESPONDENT

Date of Decision : 27-03-1998

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2000) 244 ITR 367

Hon'ble Judges : N.V. Balasubramanian, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; K. Mani, for the Respondent

Judgement

N.V. Balasubramanian, J.—The assessee is a registered firm carrying" on business in agencies with its head office at Madras and branches at Salem, Calcutta, Vijayawada, Bangalore and Hyderabad. The assessee filed a return for the assessment year 1966-67 disclosing an income of Rs. 1,65,826 as shown in the profit and loss account and the computation of income under various heads. The assessment was completed for the said assessment year on March 30, 1971, on a total income of Rs. 4,86,289. The Income Tax Officer made an addition of Rs. 1,50,000 as profits arising out of the customs clearance permits obtained in the name of French India Traders, a concern, which was held to be a benami of the assessee.

2. For the assessment year 1967-68, the assessee filed a return on March 23, 1968, disclosing an income of Rs. 2,70,315 and a revised return was also filed on May 3, 1969, admitting an income of Rs. 3,67,960. The Income Tax Officer made an addition of Rs. 9,68,750 being the profits arising out of the customs clearance permits obtained in the name of French India Traders, and added the said amount to the total income returned by the assessee and determined the total income at Rs. 14,02,802. The Income Tax Officer also initiated proceedings of penalty for concealment of income for both the assessment years and referred

the matter to the Inspecting" Assistant Commissioner in terms of Section 274(2) of the Income Tax Act, 1961.

3. The facts leading to the addition of Rs. 1,50,000 for the assessment year 1966-67 and the addition of Rs. 9,68,750 for the assessment year 1967-68 have been considered in detail, by the court in the judgment in T. C. Nos. 292 and 293 of 1983 dated March 25, 1998 Traders and Traders Vs. Commissioner of Income Tax, and a Bench of this court, in which one of us was a party, in that judgment, upheld the order of the Appellate Tribunal confining the addition to Rs. 1,50,000 for the assessment year 1966-67 and reducing the addition to Rs. 4,50,000 for the assessment year 1967-68 as against Rs. 9,68,750.

4. When the matter regarding the levy of penalty came up for consideration before the Tribunal, the Tribunal held that though the finding of the Tribunal in the assessee's appeals that some benefits must have accrued to the assessee with reference to the exploitation of the customs clearance permits may hold good for the purpose of assessment, for the purpose of levy of penalty, evidence would not be sufficient. The Tribunal had examined the evidence of G.L. Pathy, the owner of the licence and the statements of R. N. Bhattad and R. S. Jhavar, and came to the conclusion that there was no positive evidence to show that the penalty was justified on the facts of the case. The Tribunal also held that there was no positive evidence to show that the moneys had reached the assessee's firm for its own benefit, though it was routed through it. The Tribunal, therefore, came to the conclusion that the assessee had discharged its burden of proof by pointing out that the assessee had not received any benefit. The Tribunal, in this view of the matter, cancelled the penalty. Though learned counsel for the Revenue strongly pleaded that the levy of penalty was justifiable, we are of the opinion that the finding of the Appellate Tribunal is a finding of fact. When the Tribunal has recorded a clear finding that there was no evidence of concealment of income and there was no positive evidence to show that the moneys had reached the assessee for its own benefit, we are of the opinion that the Tribunal has come to the correct conclusion in holding that there was no concealment of income by the assessee. The Tribunal also considered the Explanation to Section 271(1)(c) of the Act and held that on the facts of the case, there was no direct evidence of concealment of income. We are, therefore, of the opinion that the Tribunal has come to the correct conclusion in holding that on the facts of the case, the levy of penalty was not justified and the penalty sought to be made was rightly deleted by the Tribunal. We find that the findings of the Appellate Tribunal turn on the facts of the case and we do not find any infirmity in the order of the Appellate Tribunal in cancelling the penalty. The Appellate Tribunal has referred the following questions of law for our opinion :

"1. Whether, on the facts and in the circumstances of the case, and having regard to the provisions of the Explanation to Section 271(1)(c) of the Income Tax Act, the Tribunal was right in cancelling the penalty of Rs. 50,120 and Rs. 9,68,750 levied for the assessment years 1966-67 and 1967-68 ?

2. Whether the Appellate Tribunal's finding that there was no fraud or negligence on the part of the assessee in not admitting the income from the exploitation of customs clearance permits is based on valid and relevant materials and is sustainable in law ?"

5. Since there is no positive evidence to show that the income from the exploitation of the customs clearance permits had reached the assessee, we are of the opinion, that the Tribunal was justified in cancelling the penalty imposed for both the assessment years. Accordingly, we answer the above two questions of law referred to us in the affirmative and against the Revenue. However, in the circumstances of the case, there will be no order as to costs.