
(1979) 12 KL CK 0009

In the High Court Of Kerala

Case No : Income-tax Reference No. 136 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Varkey Chacko

RESPONDENT

Date of Decision : 05-12-1979

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1980) 126 ITR 469

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; K.S. Paripoornan and G. Srivarajan, for the Respondent

Judgement

Gopalan Nambiyar, C.J.—This is a reference compelled by the revenue u/s 256(2) of the I.T. Act. The assessee was an individual carrying on business as foreman of a chitty. The assessment year with which we are concerned, is 1969-70. He filed a return on April 16, 1970, showing an income of Rs. 36,332. This represented an income of Rs. 51,525 less loss for the assessment year 1968-69, amounting to Rs. 15,193 leaving as balance the amount shown as income. No particulars were supplied in the Income Tax return, But in the computation of income, the income from chitty business was shown as Rs. 47,412. Subsequent to the filing of the return, the business premises of the assessee were searched on July 25, 1970, and certain books were seized. A scrutiny of these showed details as to how the sum of Rs. 47,412 was arrived at. It was seen that under the head "receipts" was entered veethapalisa at Rs. 18,728.24, sundry income at Rs. 19.70 and chitty commission at Rs. 1,42,250. These totalled to Rs.1,60,997.94. Deducting Rs. 1,13,585-42 as expenses, the balance income was arrived at as Rs. 47,412.52. In the statement filed by the assessee after the seizure, the chitty commission was shown at Rs. 84,930, veethapalisa at Rs. 2,548 and a new item of receipt, namely, interest, Rs. 32,000. This new calculation reduced the income to Rs. 19,760. A scrutiny of the ledger and comparison with the expenses claimed, disclosed many discrepancies. According

to the ITO, there was concealment on two counts, (1) inflation of expenditure of Rs. 26,050 in regard to the three items referred to previously and (2) non-disclosure of the income from interest amounting to Rs. 36,705, totalling Rs. 62,755. He accepted the chitty commission of Rs. 1,42,250 as per the original statement found among the papers seized. On appeal, however, the assessee's contention that the chitty commission was only Rs. 84,930 was accepted.

2. The ITO thereupon initiated penalty proceedings. The IAC held that there was inflation in expenses under the head "salary", "canvassing commission" and "bonus". One source of income, namely, receipt by way of interest was found to have been completely suppressed. The assessee pointed out the difference between the returned income of Rs. 51,525 and the finally assessed income of Rs. 56,950, and submitted that the difference between the two alone would represent the concealed income. It was argued by the assessee that if there was inflation under one head, there was an understatement with respect to another, so that, the surplus under the one would cancel the deficit under the other. It was, therefore, argued that there should be no concealment of income. This argument found favour with the Tribunal, but not with the IAC. The relevant paragraphs in the Tribunal's order are paras. 5, 6 and 7. We may quote paragraph 6 :

"6. We have examined the two statements. In one statement, no doubt, the assessee had claimed an expenditure of Rs. 1,13,585. It contained the three items, i.e., salary, bonus and commission about which there had been a discussion by the Income Tax Officer. In the revised statement, the total expenses claimed is Rs. 99,718; the difference between these two sets of claim for expenditure is about Rs. 14,000. Apart from the three items, there is not much of discussion in the assessment order or in the Inspecting Asst. Commissioner's order with regard to the claim of the expenditure under the second statement. Even if there was some inflation in the original statement, it was certainly nullified by the revised statement filed. The revised statement has also been filed well before the assessment was completed. The assessee's conduct in filing the revised statement claiming lesser expenditure had to be considered before one could conclude that the assessee had claimed inflated expenditure. We do not find any material to hold that the assessee had inflated his expenditure. The three items which had been highlighted by the Income Tax Officer are amply compensated by other items where the expenditure claimed by the assessee in the original return was less than what was claimed in the subsequent statement, e.g., under travelling expenses, the assessee's claim originally was Rs. 12,586. Under the revised statement, there was a car expenditure of Rs. 17,821, tax of Rs. 2,973 and another travelling expenses of Rs. 4,255. Chitty registration and postal registration expenses of Rs. 9,612 does not find a place in the original statement. So, taking an overall view, we do think that there had been any inflation of expenditure which is serious enough as to call for levy of penalty."

3. In para. 7, the Tribunal pointed out that the chitty commission was shown as Rs. 1,42,250 when the actual commission was only Rs. 84,930. As noticed, it was on this reason that the Tribunal came to the conclusion that there was no concealment of income.

4. We are afraid the Tribunal has approached the consideration of the question from an incorrect standpoint. Section 271(1)(c) of the I.T. Act, as it then stood, read as follows :

"271. Failure to furnish returns, comply with notices, concealment of income, etc.--(1) If the Income Tax Officer or the Appellate Assistant Commissioner, in the course of any proceedings under this Act, is satisfied that any person--...

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income

he may direct that such person shall pay by way of penalty,--

(i) in the cases referred to in Clause (a), in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent, of the tax ;

(ii) in the cases referred, to in Clause (b), in addition to any tax payable by him, a sum which shall not be less than ten per cent. but which shall not exceed fifty per cent. of the amount of the tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income ;

(iii) in the cases referred to in Clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished... "

5. It would be seen from the section that liability to penalty would be attracted under Clause (c) if there has been concealment of the particulars of income or furnishing of inaccurate particulars of such income. It is enough if this basic requirement is satisfied. Then the modus operandi for imposition of penalty provided in Sub-clauses (i) to (iii) can apply. Sub-clause (iii) has relation to Clause (c). A recent decision of this court in Commissioner of Income Tax Vs. Rowther Brothers, explained the requirement of the section thus (p. 356):

"The section has been amended with effect from 1st April, 1976. But as the amendment is immaterial for the purposes of this case, we are leaving it out. The order of imposition of penalty with which we are concerned is dated November 15, 1973. It would be noticed that under the section, all that is required for the imposition of a penalty under Clause (c) of Sub-section (1) of the section is that the officer concerned must be satisfied that any person has concealed the particulars of his income, or has furnished inaccurate particulars of such income. In other words, for the purposes of Clause (c); there is no need to find any

failure to furnish a return or failure to comply with a notice, etc., which are the necessary ingredients under Clause (a) and (b). Again in the matter of computation of penalty under Clauses (a) and (b) it would be seen that under the Sub-clauses (i) and (ii) after Clause (c), the penalty imposed is geared to the tax payable or avoided; whereas in the case referred to under Clause (c), it is not necessarily geared to the tax payable, but is in addition to any tax payable (if no tax is payable this will not enter the reckoning), an amount not more than twice the amount of the income concealed or the inaccurate particulars furnished. With this analysis of the section and its ingredients, it seems to us that the Tribunal was wrong in its reasoning that even if the concealed income were to be added, the resultant figure would only fall below the assessable limit for a registered firm and things of the kind. These are immaterial for the purpose of Clause (e)."

6. In I.T.R, No. 21 of 1978 [since reported as Union Engineering Co. Vs. Commissioner of Income Tax, this court again pointed out that the ground of action u/s 271(1)(c) is concealment of the particulars or the furnishing of inaccurate particulars. It negated the contention that there should be a conscious concealment of income and that the filing of a revised return was a relevant factor to be taken into account by the assessing authority.

7. In the light of the above conclusion and the requirements of the section, counsel for the assessee contended that the finding in paras. 6 and 7 of the Appellate Tribunal's order was a finding that there had been no concealment of the particulars of income. It might be possible to regard this in one sense as amounting to such a finding. But we are afraid the said finding has been arrived at by a completely wrong approach and a total misconstruction of Section 271(1)(c) of the Act. The Tribunal was of the view that the inflation under one head is offset by the understatement of income under another set. This is not the criterion for the purpose of applying Section 271(1)(c). The question for consideration is: had the assessee concealed the particulars of income or furnished inaccurate particulars thereof? Whether on ultimate analysis, the concealment under one head or one source of income had been offset by the inflation of another head or source, appears to us to be an irrelevant consideration. The Tribunal, we are afraid, has not approached the question keeping in mind the correct principle on the basis of which the section had to be applied. This being so, we should decline to answer the questions referred and would send back the appeal to the Appellate Tribunal for fresh disposal in accordance with law and in the light of the observations contained in this judgment. We make no order as to costs.