(1991) 06 KL CK 0001

In the High Court Of Kerala

Case No : IT Reference No. 192 of 1988 & Income-tax Reference No. 192 of 1988

Commissioner of Income Tax — APPELLANT

Vs

Varkey Chacko — RESPONDENT

Date of Decision : 20-06-1991

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

Citation : (1992) 61 TAXMAN 222

Hon'ble Judges : K.P. Radhakrishna Menon, J;K.K. Usha, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant;

Judgement

K.P. Radhakrishna Menon, J.—The question referred to us for our opinion reads:

Whether, on the facts and in the circumstances of the case and on an interpretation of section 271(1)(c) of the income tax Act, 1961 the Tribunal is justified in interfering with the order of IAC?

The operative portion of the order of the IAC is as stated below:

Therefore, after the amendment, the concealed income is not a mechanical or arithmetical difference between the income finally assessed and income returned by the assessee. I have already pointed out that the concealed income or in respect of which the assessee furnished inaccurate particulars is Rs. 62,755 and the reduction allowed by the AAC in respect of the Veethapalisa does not in any way affect this concealment. In this view of the matter, I hold that the assessee concealed particulars of his income or furnished inaccurate particulars in respect of a sum of Rs. 62,755. The assessee has absolutely no defence for this concealment and it cannot be denied that but for the search and seizure made, this income would have completely escaped assessment. Having in view these facts, I hold that the provisions of section 271 (1)(c) are clearly attracted. The maximum penalty leviable works out to Rs. 1,25,510. Having regard to all the circumstances of the case, I levy a penalty of Rs. 75,000.

The Tribunal although agreed with the finding of the IAC that the assessee has concealed the particulars of income made mention of therein, interfered with that part of the order quantifying penalty. The Tribunal is of the view that the penalty imposed by the IAC cannot be sustained in law and, therefore, reduced the same to Rs. 5,500. Relevant part of the order of the Tribunal reads:

So we are satisfied that there is only one business. So there is only one source. So the question of set off under one source against another also does not arise in the case. If that is the position then the other set off is only a matter of internal adjustment in the same business. It has also to be noted that if the income concealed is said to exceed the difference between the returned and assessed income it is likely to offend the very tenor of section 271(1)(c). So we come to the conclusion after a careful consideration that the concealed income is Rs. 5,500 only and we accordingly direct that penalty of Rs. 5,500 should be imposed.

2. In arriving at this conclusion that the concealed income is Rs. 5,500 we are of the view that the Tribunal has committed an error and, therefore, the same is not sustainable. A reference in this connection to a Division Bench ruling of this Court in Commissioner of Income Tax Vs. India Sea Foods, is profitable. In that decision the Division Bench was construing section 271 (1)(c) as stood then. For easy reference we shall read the section:

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-

(a) and (b) ******

(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) and (ii) ******

(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.

Construing this section the Division Bench has held as follows:

... Sub-clause (iii) of section 271 (1)(c) states that in cases where an assessee is found to have concealed particulars of his income or furnished inaccurate particulars of such income he may be directed to pay by way of penalty a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which particulars had been concealed or inaccurate particulars had been furnished. The lower and upper limits prescribed by this sub-clause for the levy of the penalty are linked not to the total income of the assessee as determined in the assessment order but to the amount of the income in respect of which there has been a concealment of particulars or furnishing of inaccurate particulars. If, as contended by the assessee, the intention of Parliament was that the quantification of the penalty should be with reference to the assessee''s ''income'' (meaning thereby the total income assessed) the concluding words occurring in the sub-clause after the expression ''shall not exceed twice'' need have been only ''the income of the assessee'' and it was wholly unnecessary for Parliament to use the words'' the amount of the income in respect of which the particulars have been furnished''. Parliament having deliberately added those words in the sub-clause it would be wrong to treat those words as mere surplus age and the attempt of the Court should be to find out the purpose underlying their use in the section. The words ''in respect of which the particulars have been concealed or inaccurate particulars have been furnished'' qualify the preceding expression "the amount of the income''. By using those qualifying words the Parliament has made it clear that the quantification of penalty under sub-clause (iii) is to be made with reference to that amount of the income of the assessee in respect of which there was concealment of particulars or furnishing of inaccurate particulars. ..."

(Emphasis supplied)

In the light of the above decision of the Division Bench, it should be held that the order of the Tribunal interfering with the quantum of the penalty levied by the IAC is not sustainable. The question, therefore, is answered in the negative and in favour of the revenue.

