
(2012) 09 JH CK 0170
In the Jharkhand High Court
Case No : T.A. No. 39 of 2000

Commissioner of Income Tax, Ranchi

APPELLANT

Vs

Ashok Kumar Jain

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147(1), 148, 154, 251

Citation : (2013) 255 CTR 189 : (2013) 2 JLJR 469

Hon'ble Judges : Prakash Tatia, C.J.; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Deepak Roshan and Miss Rupa Kumari, for the Appellant; Biren Poddar, M/s. Mahendra Kr. Choudhary, Piyush Poddar, Miss Darshana Poddar and Amrita Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. The following questions have been framed vide order dated 02.02.2001 :-

(1) Whether on the facts and in the circumstances of the case, the Tribunal is justified in holding that there is no concealment and that the upward revision of income, following detection of concealed income during the re-opening of the assessment absolves the penalty of assessee u/s 271(1)(C) of the Income Tax Act, 1961?

(2) Whether on the facts and in the circumstances of the case, the Tribunal is justified in deleting the levy of penalty amounting to Rs. 39,65,561/-?

2. Learned counsel for the appellant submitted that cogent reasons have been given for imposition of penalty against the assessee u/s 271(1)(C) of the Income Tax Act, 1961. Learned counsel for the appellant further submitted that the assessee furnished return of income of Rs. 1,45,40,720/- on 20.03.1977 but he did not disclose deposit of Rs. 50 lakhs in the Bank of Tokyo, New Delhi Branch on 12.05.1976 which has been in the form of Pay Orders which were issued on

30.03.1976. The Assessing Officer, Central Circle-VI, New Delhi had already required the assessee vide his letter No. ITO/C C/VI/81-82/MLJ/6288 dated 17.12.1981 to explain about the said transaction. The assessee's original assessment was made for the assessment year 1976-77 u/s 143(3) on 22.03.1977 which was rectified vide order dated 21.09.1977 u/s 154 determining the total income of the assessee at Rs. 1,45,41,305/-. Thereafter, proceeding u/s 148 read with Section 147(1) was initiated on 14.02.1978. However, after several orders, ultimately the final re-assessment was completed on 24.03.1992 on total income of Rs. 1,96,91,390/- and before that, the assessee submitted the revised return, however, in the year 1984. Therefore, it is clear from the facts of the case that to cover up the said amount of deposit of Rs. 50 lakhs in the Bank of Tokyo, New Delhi Branch on 12.05.1976, the assessee who had shown his profit to the tune of 20%, increased his profit from 20% to 27.5 % in the revised return and, therefore, it was a clear case of concealment of income by the assessee. This finding has been recorded by the Assessing Officer in penalty proceeding u/s 271(1)(C) and has been upheld by the CIT (Appeals), however, has been reversed by the Income Tax Tribunal vide order dated 06.07.2000. It is submitted that in view of the undisputed fact, question of law arises that whether the Tribunal was justified in holding that there is no concealment of income and, therefore, penalty could not have been imposed u/s 271(1)(C) of the Act of 1961 and, therefore, was not justified in deleting the levy of penalty amounting to Rs. 39,65,561/-.

3. Learned counsel for the assessee vehemently submitted that in fact the very initiation of proceeding u/s 271(1)(C) for imposition of penalty itself was wholly without jurisdiction because of the reason that in the final assessment order dated 24.03.1992, the Assessing Officer has not recorded any finding of concealment of any income by the assessee rather say, the Assessing Officer has accepted all the contentions of the assessee and recorded specific finding that the reconciliation of income shown has been examined and there appears to be no difference with references to expenses and investments made during the year which calls for addition u/s 69(B). So far as finding with respect to the deposit of Rs. 50 lakhs in the Bank of Tokyo is concerned, nothing has been even observed by the Assessing Officer against the assessee even after taking note of the fact in Sub-para (i) of Para 2 of the order dated 24.03.1992 while dealing with the difference of bank balance. It is also submitted that the Assessing Officer, therefore, consciously did not order for initiation of proceeding u/s 271(1)(C). Just contrary to the said assessment order dated 24.03.1992, the Assessing Officer in the proceeding u/s 271(1)(C), has observed that the "intention" of the Assessing Officer was to initiate the penalty proceeding for concealment of income and this has been recorded in assessment order and, therefore, notice u/s 271(1)(C) read with Section 274 was issued to the assessee. It is submitted that very foundation for initiation of proceeding is since missing, therefore, the entire proceeding was wholly without jurisdiction. From the assessment order itself it is clear that Assessing officer neither shown his "intentions" to initiate

penalty proceedings nor "ordered for initiation of penalty proceedings. It is also submitted that mere addition of income and that too, on the basis of the revised return, cannot call for initiation of any penalty proceeding unless that revised return is rejected by the Assessing Officer upon the finding that in the revised return the assessee has added the income merely to cover up some concealed income. Otherwise also, the concealment cannot be inferred because of addition of the income only.

4. We considered the submissions of the learned counsel for the parties and perused the final assessment order dated 24.03.1992. A bare perusal of the brief assessment order dated 24.03.1992, which has been passed after setting aside all the earlier orders by the appellate authority and in view of the remand order passed by the appellate authority, there appears that no adverse finding has been recorded against the assessee with respect to the concealment of any of the amount. The operative part of the assessment order is as under :-

5. It appears from re-computation of the income that the total income of the assessee has been accepted as per the order passed u/s 143(3)/251 dated 30.03.1989 and the income assessed is Rs. 2,51,13,270/-. Out of this income, the addition has been disallowed in view of the explanation furnished by the assessee and which has been accepted by the Assessing Officer and thus, deletion of Rs. 54,21,878/- resulted into net income at Rs. 1,96,91,390/-. In the assessment order there is no finding of the Assessing Officer that the assessee was guilty of concealing the income which he could have recorded as provided u/s 271(1) which says that if the Assessing Officer or the Commissioner (Appeals) or the Commissioner, in course of any proceeding under the Act, is satisfied that any person has concealed particulars of his income or furnished inaccurate particulars of such income, then he may direct that such person shall pay, by way of penalty. Therefore, Section 271(1) requires satisfaction of Assessing Officer in the course of any proceeding with respect to the concealment or furnishing of inaccurate particulars of the income. It appears that the Assessing Officer, in the proceeding, for the first time, u/s 271(1)(C), may have initially understood that the "intention" of the Assessing Officer was to initiate the penalty proceeding then he has further made it obvious that such intention has been recorded in the assessment order and, therefore, accordingly notice u/s 271(1)(C) was issued to the assessee. We do not find either intention of the Assessing Officer or recording of satisfaction of the Assessing Officer that the assessee has concealed some income or has furnished inaccurate particulars.

6. Furthermore, it will be relevant to mention that the assessee's revised return showing profit to the tune of 27.5% was initially not accepted by the Assessing Officer and he declared the profit to be 31% and that finding has been set aside in appeal and the assessee's profit has been accepted to be 27.5% as shown in the revised return meaning thereby, the assessee's income to the tune of 27.5% includes the relevant entry of Rs. 50 lakhs which is the amount deposited in the Bank of Tokyo, New Delhi Branch. In view of the above reasons, we do not find

any question of law in this appeal and it is only a question of fact has been raised by the revenue but so far as argument of learned counsel for the respondent that the initiation of proceeding was not justified appears to be a question of law and accordingly, it is held that in the facts of the case, initiation of proceeding u/s 271(1)(C) was not justified. Hence, the appeal is dismissed.