
(1997) 08 MP CK 0042

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 134 of 1993

Dev Chand and Sons

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-08-1997

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 271, 271(1), 271(2)

Citation : (1999) 154 CTR 572 : (1998) 234 ITR 497 : (1998) 96 TAXMAN 348

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : A.K. Shrivastava, for the Appellant; Abhay Sapre, for the Respondent

Judgement

A.K. Mathur, C.J.—This is an application u/s 256(2) of the Income Tax Act, 1961, at the instance of the assessee for calling for the statement of the case from the Tribunal, on the following questions of law for answer by this court :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax authorities were justified in imposing penalty on the assessee u/s 271(1)(a) of the Income Tax Act, 1961 ?

(2) Whether the order of the Tribunal is bad and vitiated in law in not considering the facts and circumstances of the case like filing of statement of income/ estimate income, paying advance tax, filing Form No. 12, filing Form No. 6 and return during amnesty period, etc., and not passing a speaking order in regard to facts, thus overlooking material evidence ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee R. F. was liable to penalty u/s 271(1)(a) read with Sub-section (2) of Section 271 of the Income Tax Act in spite of the fact that the assessee had no "assessed tax" in terms of the Explanation to Section 271(1)(i)(b) of the Income Tax Act, 1961 ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was

right in law in holding that penalty was rightly imposed on the assessee, a R. F. even though the tax assessed on it as a registered firm was nil ?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal was right in setting aside the order of the Deputy Commissioner of Income Tax (Appeals) holding it to be perverse, illegal and ab initio void ?"

2. The assessee is a registered firm. For the assessment years 1981-82, 1982-83, 1983-84 and 1988-89, the assessee filed the estimate/statement of income for payment of advance tax and paid advance tax for each assessment year. However, the returns were not filed before the due dates prescribed for filing the returns. The returns were filed late by 47 months, 42 months, 32 months and 10 months, respectively. The assessee, however, paid advance tax which was more than due and therefore a refund was also ordered of Rs. 232 for the assessment year 1981-82, Rs. 112 for the assessment year 1982-83, Rs. 95 for the assessment year 1983-84 and Rs. 189 for the assessment year 1988-89. Despite this, the assessee being a registered firm was penalised for filing late returns. Aggrieved by this order of the Assessing Officer, an appeal was preferred before the Deputy Commissioner of Income Tax (Appeals), Jabalpur, who allowed the appeal for all the assessment years in question, Against this order, the Revenue filed an appeal before the Tribunal. The Tribunal reversed the order of the Deputy Commissioner of Income Tax (Appeals) referring to a decision of this court in the case of Commissioner of Income Tax Vs. Bhabuti Contractor, . Hence, the assessee made an application before the Tribunal u/s 256(1) of the Income Tax Act for referring the matter before this court. The Tribunal held that in view of the decision of the High Court of Madhya Pradesh on the issue that notwithstanding the fact that the tax has been paid in advance, still penalty can be levied under the provisions of Section 271(1)(a) of the Act. The Tribunal rejected the application u/s 256(1) of the Act on the above ground and, therefore, the assessee has approached this court u/s 256(2) of the Act.

3. We have heard learned counsel for the parties and perused the record, This court after reviewing all the cases including Andhra Pradesh, Madras and Gauhati and in view of the decision of the Supreme Court, has categorically laid down that the intention of the Legislature is very clear that late filing of return will visit penalty irrespective of the fact whether the advance tax has been paid or not specially with regard to registered firms. In that context, their Lordships, after referring to the earlier decisions of this court, have taken the view that if the penalty can be nullified by payment of advance tax, then this provision will be rendered otiose and that is not the intention. Their Lordships after considering all the decisions of various High Courts, for and against, concluded as follows (page 459) :

"From a perusal of the decisions in Chotelal Kanhaiyalal's case [1971 118 ITR 656] and in Jain Bros. and Others Vs. The Union of India (UOI) and Others, , it is apparent that registered firms were sought to be placed on a footing different from other assesseees for a valid reason which has already been indicated above.

It seems that, on account of the benefits available to a registered firm, Parliament intended to take a more stringent view in the matter of imposition of penalty if it was a case of a registered firm. Imposing of penalty cannot be made to depend on the payability of the tax. There may be cases where even though liability to penalty may have accrued, but on account of certain circumstances in the ultimate analysis, no penalty or a nominal penalty may be levied. Simply because, ultimately, at the stage of quantification of the amount of penalty, no penalty may be payable, it cannot be said that the provision making a person liable to penalty on the ground of default committed by him, is to be treated as otiose on that ground. If such a view is taken, it would encourage violation of the provisions of Clause (a) of Sub-section (1) of Section 271 by a registered firm on the pretext that the advance tax which, according to it, was payable had been paid and, consequently, it was not at all necessary for it to file any return. This obviously would militate against the very purpose for which Clause (a) of Sub-section (1) of Section 271 of the Act had been enacted."

4. The Tribunal has relied on this decision and rejected the application of the assessee. Learned counsel for the assessee has invited the attention of this court to the subsequent decision of this court in the case of Commissioner of Income Tax Vs. Ramlal Chiranjilal, . Unfortunately, there is an earlier decision of the Division Bench in the case of Commissioner of Income Tax Vs. Bhabuti Contractor, , which is exhaustive and was not brought to the notice of their Lordships. Their Lordships only relied on the decisions of the Gauhati, Madras and Andhra Pradesh High Courts which were considered in the case of Commissioner of Income Tax Vs. Bhabuti Contractor, and distinguished. The ratio laid down in Commissioner of Income Tax Vs. Bhabuti Contractor, , was followed by this court in the case of Dadariya Sales and Service Vs. Commissioner of Income Tax and Others, . Therefore, without making any comment on the decision in the case of Commissioner of Income Tax Vs. Ramlal Chiranjilal, , suffice it to say that the earlier judgments which are very exhaustive were not brought to the notice of their Lordships in the case of Commissioner of Income Tax Vs. Ramlal Chiranjilal, . As such, their Lordships had no occasion to examine the same. Be that as it may, we are of the view that the case of Commissioner of Income Tax Vs. Bhabuti Contractor, , lays down the proposition of law more exhaustively and holds the field.

5. In view of the above, no question of law arises in this case. The application u/s 256(2) of the Income Tax Act, 1961, at the instance of the assessee has no merit and the same is accordingly rejected.