
(1974) 03 AHC CK 0002

In the Allahabad High Court

Case No : Income-tax Reference No. 168 of 1972

HARI SHANKAR GOPAL HARI

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 25-03-1974

Acts Referred:

Income Tax Act, 1922 — Section 13

Citation : (1974) 97 ITR 716

Hon'ble Judges : Satish Chandra, J

Bench : Division Bench

Judgement

SATISH CHANDRA J., - Messrs. Hari Shankar Gopal Hari, Kanpur, the assessee, is a firm which deals in the business of supplying almond kernels, condiment power and certain dehydrated vegetables to the Government. For the assessment year 1945-46, the firm returned an income of Rs. 28,392. The Income Tax Officer, after examining the books of account produced by the assessee, held :

(a) The accounts produced have been cooked up specially for Income Tax purposes.

(b) Not only the cost of raw materials consumed has been inflated, there is also manipulation of the quantities consumed and purchases of condiment power have been disguised as purchases of chillies, etc.

(c) Wages have been inflated, and to support this inflation, wage sheets have been cooked up.

The Income Tax Officer further found that in spite of notice to produce the stock and production register, the same was withheld.

On these findings the account books were rejected. The proviso to section 13 of the Indian Income Tax Act, 1922, was applied, and a best judgment assessment was made estimating the income at Rs. 1,10,618. The estimate was arrived at by applying a rate of 25 per cent. net on the supply of dehydrated vegetables and

40 per cent net on the supply of condiment powder.

It appears that the assessee made an application u/s 27 of the Income Tax Act, for the setting aside of this, what is called, ex parte assessment order. The same having been rejected, the assessee filed an appeal against the regular assessment order as well as the order rejecting his application u/s 27.

The Appellate Assistant Commissioner dismissed both the appeals. The Appellate Assistant Commissioner did not find any substance in many of the charges and allegations made by the Income Tax Officer. He, however, found that the assessee, books of accounts were defective and that the assessee willfully withheld its stock and production register. He further found that the assessee had inflated certain expenses, such as soldering charges and the costs of tins and packing cases, etc. The Commissioner, however, reduced the net profit rate with regard to the supply of condiment powder from 40 per cent. to 30 per cent.

The assessee felt aggrieved and took the dispute to the tribunal on appeal. The Tribunal held that the Income Tax Officer was justified in applying the proviso to section 13. It did not go into the various findings recorded by him in relation to the account books or on the question whether the assessee maintained a stock register. It assumed for the time being that one was not maintained. With regard to the estimate of the income, the Tribunal felt that a rate of 20 per cent. was sufficient. To this extent the appeal was allowed.

The Income Tax Officer drew up penalty proceedings u/s 28 (1) (c) on the ground that the assessee had deliberately concealed its income and had furnished inaccurate particulars thereof. After hearing the assessee the Income Tax Officer held that the assessee had concealed the particulars of its income as well and had furnished inaccurate particulars regarding items which he disclosed, because,

- (1) the assessee did not produce the stock book and production register, and thus concealed the true particulars of its income from the department (The Income Tax Officers conclusion that the assessee did maintain these two registers but did not produce them before the Income Tax Officer was affirmed by the Appellate Assistant Commissioner);
- (2) the assessee admitted that it did not adhere to the specifications given by the Government for preparing the condiment powder, and thus its profit was much higher; the extent of the concealment could not be accurately pin-pointed because of the withholding of the stock book and production book;
- (3) the consumption of stores was inflated;
- (4) claim for fabrication charges was inflated;
- (5) claim for soldering charges was also inflated.

The Income Tax Officer held that whatever books were produced before the Income Tax Officer were cooked up and did not reflect the true position of the

profits earned by the assessee. On these findings he imposed a penalty of Rs. 22,000.

On appeal the Appellate Assistant Commissioner quoted the relevant part of the Tribunal's order and held that in view of the Tribunal's order it was very difficult to accept that the appellant had concealed any income or deliberately furnished inaccurate particulars thereof. The accounts of the assessee might have been found to be wanting as a result of which it was declared to be a fit case for the application of the provisions of section 13, but the allegation that the assessee had concealed its income was not at all established. On this view the penalty order was set aside.

The Income Tax Officer went up in appeal to the Tribunal. The Tribunal held that the findings given by the departmental authorities in the assessment proceedings, though rebuttable, could constitute sufficient material for penalty proceedings. In the quantum appeal the tribunal did not consider it necessary to examine the findings of the departmental authorities charging the assessee with concealment, and so the Tribunal observed that the findings of the departmental authorities could not be deemed to have been disapproved by the Tribunal, and that in this view those findings were available for being relied upon in the penalty proceedings. It was then observed that in the present case the Income Tax Officer had referred to those very findings of concealment in the penalty proceedings, and the assessee had not produced any material to show that those findings were in any way wrong. It held that the Income Tax Officer was justified in relying on the findings given by him in the order of assessment to the extent they were approved by the Appellate Assistant Commissioner and not disapproved by the Tribunal. On this view it was held that the finding of concealment was justified. The department's appeal was allowed and the order of the Appellate Assistant Commissioner was set aside.

At the instance of the assessee the Tribunal has referred the following questions of law for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in casting on the assessee in the penalty proceedings the onus to prove that the findings of the Income Tax Officer or the Appellate Assistant Commissioner in the quantum proceedings were wrong?

(2) If the answer to question No. 1 is in the negative, then whether, on the facts of the case, the onus of proving the alleged concealment has been duly discharged by the Income Tax Officer by merely relying on the findings given in the assessment proceedings which were modified in appeal?

(3) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in setting aside the order of the Appellate Assistant Commissioner and restoring the penalty order of the Income Tax Officer?"

In our opinion, question No. 3 is wide enough to embrace the controversy whether, and if so to what extent, the findings recorded by the Income Tax Officer and affirmed by the Appellate Assistant Commissioner were approved or disapproved by the Tribunal in the quantum proceedings. In the present case the Tribunal has held that those findings were not disapproved, and so they were available and could be relied upon by the departmental authorities in the penalty proceedings. This finding is, in our opinion, within the purview of question No. 3.

It may be recalled that apart from many other defects of inflation and suppression detected in the books of account maintained by the assessee, the Income Tax Officer and the Appellate Assistant Commissioner had found that the circumstances showed that the assessee did maintain the stock and production register but had deliberately suppressed them. The Tribunal, on the other hand, held that it was not necessary to determine whether the assessee maintained a stock register. The Tribunal also observed that it assumed for the time being that one was not maintained. This would show that in the opinion of the Tribunal the question whether stock books, etc. were maintained or not was not very material for deciding whether the assessment of income u/s 23 (4) was or was not justified.

In our opinion, the Tribunal intended to hold that, since the proceedings were u/s 23 (4) according to the best judgment of the Income Tax officer, the question whether these registers were maintained was not very material. For the purposes of the quantum appeal it cannot hence be said that the finding that these registers were maintained but were suppressed was not disapproved. The application of the proviso to section 13 was upheld on the grounds that the margin of profit disclosed by the assessee's book was unreasonably low and that no satisfactory explanation was given as to the low margin of profits. The Income Tax Officer and the Appellate Assistant Commissioner had applied the proviso to section 13 not only on these two grounds, but also on the additional ground that the registers were maintained but were suppressed. This the Tribunal refused to uphold. This also shows that the Tribunal disapproved of the finding that the registers were maintained. The Tribunal proceeded on the finding that the registers were maintained. Thus, it cannot be held that the Tribunal approved the finding that those registers were deliberately suppressed. It cannot hence be said that finding survived after the Tribunal's order.

With regard to the various findings showing that the account books were cooked up and various costs, etc., were inflated, the Tribunal held :

"It is, however, surprising that even though the assessment has been made u/s 23 (4) of the Act, the Income Tax Officer went into the account books produced very minutely. We cannot alter the assessment u/s 23 (4) to one u/s 23 (3) in this appeal."

In the context of its earlier finding with regard to the maintenance of the stock and production registers, the sentence quoted above clearly amounts to saying

that those various findings with regard to the state of the account books were irrelevant to the estimate of income u/s 23 (4) after applying the proviso to section 13 where under the account books had been rejected. In our opinion, the Tribunal clearly meant that the Income Tax Officer should not have gone into the account books very minutely. If he had not done so, he certainly could not have recorded the various detailed findings as he actually did. The criticism that the Income Tax Officer should not have gone into the accounts very minutely is equally applicable to the order passed by the Appellate Assistant Commissioner. Thus, the various recorded after a minute examination of the account books stood disapproved by the Tribunal.

The Tribunal, after making these observations, straightaway went to the question as to what is the appropriate rate to be applied to estimate the assessable income.

To sum up, the position is that the various findings recorded by the Income Tax Officer and which were affirmed by the Appellate Assistant Commissioner were all disapproved by the Tribunal. Thus, none of those findings were available so as to be utilised in penalty proceedings. It is evident that in the penalty proceedings the Income Tax Officer relied upon the findings recorded by him in the regular assessment proceedings. There is nothing to suggest that he examined any evidence or material afresh in penalty proceedings. The question referred to us also proceeded on the basis that the earlier findings had been relied upon. Since there were no findings relevant to the question of concealment or furnishing of inaccurate particulars, there was no question of their being relied upon. On the basis that such findings were available, the Tribunal set aside the order of the Appellate Assistant Commissioner. In our opinion it was not justified in doing so.

We would, therefore, answer question No. 3 in the negative, in favour of the assessee and against the department. In view of this answer questions Nos. 1 and 2 are merely academic. We, therefore, leave them unanswered.

The assessee would be entitled to costs, which are assessed at Rs. 200. The fee of learned counsel is also assessed at the same figure.