
(2002) 08 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Income Tax A. No. 16 of 2002

Harigopal Singh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2002) 177 CTR 580 : (2002) 258 ITR 85 : (2002) 125 TAXMAN 242

Hon'ble Judges : Virender Singh, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : P.C. Jain and Pankaj Jain, for the Appellant; N.L. Sharda, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—The question of law that arises in this appeal filed by the assessee u/s 260A of the Income Tax Act, 1961 (for short "the Act"), is whether penalty is attracted u/s 271(1)(c) of the Act where income is assessed purely on estimate basis and additions are made in the declared income on that basis. The facts giving rise to this appeal lie in a narrow compass and these may first be noticed.

2. The appellant is a Halwai (sweets seller) and he was not maintaining any accounts. He filed his Income Tax return on estimate basis and declared his income at Rs. 52,000. The income was, however, assessed by the Assessing Officer at Rs. 2,07,500 by estimating the appellant's sales and gross profit. The appeal filed against the order of assessment was dismissed by the Commissioner of Income Tax (Appeals) with the following observations :

"In the light of the above discussion, I hold that the estimate of income by the learned Income Tax Officer is fair and no interference is called for."

3. On further appeal, the Tribunal reduced the addition to Rs. 1,50,000. Hence, the income was finally assessed at Rs. 1,50,000 against the declared income of

Rs. 52,000. The Assessing Officer initiated penalty proceedings against the assessee by invoking Section 271(1)(c) along with the Explanation 1(B) of the Act on the plea that he had concealed the particulars of his income. A show-cause notice was issued to him u/s 274 read with Section 271(1)(c) of the Act. In reply thereto, the assessee pleaded that since no positive concealment had been detected by the Department and the addition was made in his income only on estimate basis, no penalty u/s 271(1)(c) of the Act could be imposed because the assessee's income on estimate basis keeping in view his household expenses as well as the statement of accretion to his assets during the year under consideration, was bona fide. The Assessing Officer did not accept the reply and found that since the assessee had not filed any fresh evidence in penalty proceedings to prove that there was no attempt on his part to conceal his income, he, by his order dated March 10, 1992, imposed a penalty of Rs. 50,000. Feeling aggrieved by this order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Patiala, who allowed the same holding that there was indeed no positive evidence whatever to show that the appellant's income during the year in question was, in fact, more than the income returned by him and that estimated additions in the returned income do not attract penalty u/s 271(1)(c) of the Act. The Revenue went up in appeal before the Income Tax Appellate Tribunal which was allowed by order dated May 30, 2001. It is against this order that the present appeal has been filed which raises the aforesaid question of law.

4. In order to attract Clause (c) of Section 271(1) of the Act, it is necessary that there must be concealment by the assessee of the particulars of his income or if he furnishes inaccurate particulars of such income. What is to be seen is whether the assessee in the present case had concealed his income as held by the Assessing Officer and the Tribunal. He had not maintained any accounts and he filed his return of income on estimate basis. The Assessing Officer did not agree with the estimate of the assessee and brought his income to tax by increasing it to Rs. 2,07,500. This, too, was on estimate basis. The Tribunal agreed that the income of the assessee had to be assessed on an estimate of the turnover but was of the view that the estimate as made by the Assessing Officer was highly excessive and it fixed the total income of the assessee at Rs. 1,50,000 for the year under appeal. It is, thus, clear that there was a difference of opinion as regards the estimate of the income of the assessee. Since the Assessing Officer and the Tribunal adopted different estimates in assessing the income of the assessee, it cannot be said that the assessee had "concealed the particulars of his income" so as to attract Clause (c) of Section 271(1) of the Act. There is not even an iota of evidence on the record to show that the income of the assessee during the year under appeal was more than the income returned by him. Additions in his income were made, as already observed, on estimate basis and that by itself does not lead to the conclusion that the assessee either concealed the particulars of his income or furnished inaccurate particulars of such income. There has to be a positive act of concealment on his part and the onus to prove

this is on the Department. We are also of the considered view that the Tribunal grossly erred in law in relying on Explanation 1(B) to Section 271(1)(c) of the Act to raise a presumption against the assessee. The assessee had justified his estimate of income on the basis of household expenditure and other investments made during the relevant period. It is not the case of the Revenue that he had, in fact, incurred expenditure in excess of what he had stated. In this view of the matter, it cannot be said that the explanation furnished by the assessee had not been substantiated or that he had failed to prove that such explanation was not bona fide.

5. In the result, the appeal is allowed and the question posed in the earlier part of the order is answered in the negative holding that the provisions of Section 271(1)(c) of the Act are not attracted to cases where the income of an assessee is assessed on estimate basis and additions are made therein on that basis. Consequently, the impugned order of the Tribunal dated May 30, 2001, is set aside and that of the Commissioner (Appeals) dated April 8, 1993, restored. The assessee will have his costs which are assessed at Rs. 500.