

(1974) 02 KL CK 0002

In the High Court Of Kerala

Case No : C.M.P. No. 1158 of 1974 in I.T.R. No. 16 of 1971

K. Ahamad

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-02-1974

Acts Referred:

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

Citation : (1974) 96 ITR 29

Hon'ble Judges : P. Govindan Nair, C.J;M.U. Isaac, J;George Vadakkal, J

Bench : Full Bench

Advocate : T.L. Viswanatha Iyer, E.R. Venkiteswaran and P.S. Narayanan, for the Appellant; P.K. Krishnankutty Menon, P.A. Francis and P.K. Ravindranatha Menon, for the Respondent

Judgement

Govindan Nair, C.J.—This is a petition styled to be one u/s 256 of the Income Tax Act, 1961, for short, " the Act ", and Section 151 of the CPC and the prayer therein is :

" It is therefore prayed that this hon"ble court be pleased to delete the sentence occurring in para. 4 in the judgment, namely :--" Imposition of penalty by the Inspecting Assistant Commissioner was therefore justified " or to clarify that this court had not intended by the said statement to justify the imposition of penalty even if the Explanation applied and that it is open to the Appellate Tribunal to consider the appeal, regarding the sustainability of the imposition of penalty under the Explanation"

2. The judgment in which the sentence sought to be deleted occurred was pronounced* in expressing our opinion on the question referred for our opinion by the Income Tax Appellate Tribunal, Cochin Bench, which was in these terms :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the Explanation to Section 271(1)(c) of the Income Tax Act, 1961, is not applicable to this case ? "

3. For the assessment year 1963-64, the Income Tax Officer felt that the assessee was liable to be penalised u/s 271(1)(c) of the Act and since he also felt that the minimum penalty leviable exceeded Rs. 1,000 he referred the proceedings to the Inspecting Assistant Commissioner of Income Tax, Calicut Range. That officer took the view that, apart from stating that the Explanation to Section 271(1)(c) was introduced only with effect from April 1, 1964, and no offence can be created with retrospective effect, the assessee has not let in any evidence to prove that the difference between the returned income and 80% of the income assessed did not arise due to any of the defaults contemplated in the Explanation to Section 271(1)(c) of the Act. In this view of the matter, he imposed a penalty of Rs. 6,000. The assessee appealed to the Appellate Tribunal and the Tribunal was of the opinion that :

" Certainly this Explanation has introduced a fresh point for the purpose of levy of penalty. Therefore, the Explanation is not declaratory of pre-existing law as the department contends, but it clearly affects vested rights which have accrued to the assessee. The vested right is the immunity from the levy of penalty imposable under the circumstances adumbrated in the Explanation. If so, the well-settled rule of construction precludes us from construing the Explanation as retrospective unless the amending Act expressly or by necessary implication makes it retrospective. The assessment year in the instant case is the year 1963-64 and the Explanation to Section 271(1)(c) is not applicable to the facts of the present case. In the view we have taken, it is unnecessary to go into the question raised by the assessee regarding the loss of books. The order of penalty is quashed and we direct the Income Tax Officer to refund the amount, if collected from the assessee."

4. It was in the light of and because of this view expressed by the Tribunal that the question whether the Explanation to Section 271(1)(c) of the Act would apply to the case of the assessee for the year 1963-64 was referred to this court and in our judgment, in answering the question, we said that the important point to be considered was what the law was at the time the act or omission which was penalised was committed and we quoted a passage from the judgment of the learned Chief Justice of the Madras High Court, Sir Lionel Leach, in COMMISSIONER OF Income Tax, MADRAS Vs. VEDLAPATLA VEERA VENKATARAMIAH AND ANOTHER., wherein, if we may say so, there is a lucid enunciation of the principles that a question whether an act or omission is liable to be punished by virtue of a law must depend on the state of law at the time of the commission of the act or omission. The commission of the act or omission in the case having occurred after the Explanation was introduced to the section, we held that for the year of assessment 1963-64, the Explanation was applicable. We answered the question accordingly. This is all that we meant and we venture to think that this is all that we have said in the judgment; but unfortunately a sentence has crept into paragraph 4 of our judgment which, we are convinced, is due to an accidental slip or omission or carelessness and which, we are further convinced, has given rise to elaborate arguments before the Tribunal and before

us this morning by the departmental representatives. On the basis of this sentence we are asked to hold that we also decided that the assessee is liable to be penalised, a question which was not before us, a question which we should not have considered, a question, which we think, we have no jurisdiction to consider; and a question which we did not decide. We will extract paragraph 4 of the judgment in view of the elaborate arguments that have been advanced before us to make the point that we have stated clear :

" The year of assessment with which we are concerned is 1963-64. It is admitted that the return filed by the assessee for the year is the one dated September 8, 1966. The amount of income disclosed by the return was only Rs. 13,746. The assessment was completed fixing the total income at Rs. 65,570. The income returned was, therefore, less than 80 per cent. of the total income assessed. The Explanation to Section 271(1)(c) was thus directly attracted. This means that it must be presumed that the assessee had furnished inaccurate particulars of his income, unless he established that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part. The act of furnishing inaccurate particulars had taken place after the amendments were introduced in the section. Imposition of penalty by the Inspecting Assistant Commissioner was, therefore, justified. The Tribunal held that the amended section would not apply because the year of assessment (1963-64) ended before the amendments were effected. It was further observed that to apply the section would be to give retrospective operation to the section as amended."

5. We proceeded to say in paragraph 5 that :

" The year of assessment has nothing to do with the question of liability arising u/s 271(1)(c) of the Income Tax Act, 1961. And to apply the section as amended to an act committed after the amendment is not to give the section retrospective effect. The only question is whether the elements of the section had been satisfied when the act was committed. This is what a Division Bench of this court said in ITR No. 71 of 1968, Commissioner of Income Tax Vs. M. Mukundan (dec'd.) (by legal representatives), ."

6. We have referred to other decisions wherein the principles stated by Sir Lionel Leach, Chief Justice of the Madras High Court, in Commissioner of Income Tax v. Vedlapatla Veera Venkataramiah would apply for answering the question against the assessee. The sentence " Imposition of penalty by the Inspecting Assistant Commissioner was, therefore, justified " which torn from its context and read by itself without reference to the question referred to us, the answer that we have given to the question, and the reasons that we have given for giving that answer may convey an entirely different meaning than that it was intended to convey. The Inspecting Assistant Commissioner has held that the Explanation applied to the case of the assessee. He further held that the extenuating circumstances that an assessee should plead to get over the rigour of the Explanation had not been made out by the assessee before him. We never dealt with the question as to whether those extenuating circumstances existed or whether they were sufficient

or whether notwithstanding those extenuating circumstances, if any, the assessee was still liable. In these circumstances, the interpretation placed on the sentence, we think, is thoroughly unjustified. But, considering the fact that the sentence has been so relied on, we think the position must be clarified. The sentence must disappear from the judgment in the interest of justice for which alone courts have been constituted and we consider not only that it is our right to do so, but our imperative duty to delete that sentence from the judgment. We know no law which precludes us from doing so. The Judicial Committee of the Privy Council said long years ago that courts are constituted for the purpose of doing justice, that it is inherent in their discharge of functions that they must have the powers akin to what we propose now to exercise for removing any wrong impression that may arise if the sentence is read torn from the context. The Supreme Court in its decision in *Master Construction Co. (P) Ltd. v. State of Orissa* [1966] 17 S.T.C. 360 has clearly, if we may say so with great respect, delineated the ambit of the meaning of the words "accidental slip or omission" arising in a judgment. That Section 152 of the CPC is inapplicable, Section 151, is also inapplicable, that this court in exercising a jurisdiction quasi-judicial in nature in answering a question referred to us at the instance of the assessee or the department and so we have no inherent powers arising from these provisions even if accepted cannot be a ground for rejecting the prayer in the petition. The power we think we have is apart from the sections. Section 151 of the CPC does not confer any inherent power on a court. The section only saves that power. The power was there even without the section particularly in a court of record which a High Court is and apart from the section what inherent power existed exists now and we have no doubt that as long as we follow the system of jurisprudence we have been following the law will continue to make that power available. Errors can creep in and there can be omissions and if there are accidental errors or omissions, we conceive that we have the jurisdiction to correct those errors and rectify those omissions. The principle is that no act of a court shall ever injure a party.

7. We have been referred by counsel for the department to three decisions, the earliest of which is in *Commissioner of Income Tax v. Tehri-Garhwal State* [1934] 2 ITR 1 (P.C.). A passage from page 8 had been quoted for the proposition that if this court has construed a statute in a particular manner in answering a question referred to it by the Income Tax Appellate Tribunal, that construction cannot be replaced by another even if the court is satisfied that the earlier construction laid on it is erroneous. What the court in that case was ordered to do was to reverse the decision taken by the court for which of course this court has no jurisdiction. That is not the matter before us and we do not think that the decision has any application. Similarly the decision in (1940) 8 ITR 412 lays down the same proposition. The provision for review contained in Order XLVII of the CPC will not apply in reviewing a judgment answering questions referred to this court u/s 256 of the Act and will be of no assistance in deciding this case. The Allahabad High Court in the decision in *Roop Narain Ramchandra (P.) Ltd. Vs. Commissioner of*

Income Tax, has expressed the view that Section 151 of the CPC has no application when this court functions in its advisory jurisdiction in answering questions referred to it under the Income Tax Act. With utmost respect we are unable to accept this proposition. The question really is not whether Section 151 in terms would apply or not. As we indicated earlier this court has the inherent jurisdiction to correct errors and omissions arising from accidental slips. We have no doubt that this inherent power exists in the court from the very nature of its constitution and purpose. It is paramount that court must do justice and if any errors arising from accidental slips or omissions creep into judgments, which can result in injustice, such errors must be removed,

8. We allow this petition and delete the sentence " Imposition of penalty by the Inspecting Assistant Commissioner was, therefore, justified," from our judgment in ITR No. 16 of 1971, Commissioner of Income Tax v. K. Ahamed [1974] 95 ITR 591 (Ker.) [FB]. We make no order as to costs.