

(1950) 05 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Reference No. 9 of 1949
KISHORE CHAND RAMJI DAS, IN RE.

Date of Decision : 12-05-1950

Acts Referred:

Income Tax Act, 1961 — Section 28(3)

Citation : AIR 1950 P&H 314 : (1950) 18 ITR 680

Hon'ble Judges : Kapur, J

Bench : Division Bench

Judgement

KAPUR, J. - This is another case where a great deal of time of this Court has been wasted because of the laconic statement of the case sent up by the Appellate Income Tax Tribunal. The statement is unaccompanied by the order of the Appellate Tribunal or the order of the Appellate Assistant Commissioner or of the Income Tax Officer. Had all these documents been sent up along with the statement of the case it would have been easier for us to follow exactly what the Tribunal wanted to say.

This case has been stated by the Allahabad Bench of the Income Tax Appellate Tribunal on the following facts :-

The assessee made a return of Rs. 17,220. Subsequently because of certain circumstances, which need not here be stated, he made another return raising his income to Rs. 66,364. When this return was made a notice u/s 28(3) of the Income Tax Act was issued to the assessee to show cases why a penalty should not be imposed upon him. After hearing assessee the Income Tax Officer imposed a penalty of Rs. 20,000 which on appeal was upheld by the Appellate Assistant Commissioner and also on second appeal by the Appellate Tribunal. Whether in the circumstances of this case the Income Tax officer or the Appellate Assistant Commissioner was justified in imposing the penalty or this amount of penalty, is not for this Court to decide because opinions may differ on this point and it is not before us.

The assessee applied to the Tribunal to state the case which has been done. But I must say with say very great respect that all the relevant facts have not been

put as fully as they may well have been done. The case seems to be this that according to the assessee the Income Tax Officer made a proposal for the imposition of a penalty of Rs. 4,000. In his affidavit which he filed before the Appellate Assistant Commissioner he stated as follows :-

"I,solemnly depose that when I explained the bona fides of my case to the Income Tax Officer, I was told that I need not worry as he was going to recommend a sum of Rs. 4,000 only as penalty."

It appears that in the course of arguments this affidavit was taken to mean that the Income Tax Officer had made a recommendation of Rs. 4,000. However and by what process of reasoning this was achieved, I cannot say. But the indications from the statement of the case are that this is what was accepted to be the position.

The submission of the assessee in a nutshell is this. The original proposal of the Income Tax Officer was for Rs. 4,000 and if the Inspecting Assistant Commissioner did not approve of it he could advise the Income Tax Officer as to the propriety of levying the penalty as also the amount which should in the circumstances of the cases be levied. But the assessee submits that it was incumbent on the Income Tax Officer to make a second proposal imposing a penalty of Rs. 20,000 and that not having been done, according to the assessee, the imposition of the penalty of Rs. 20,000 is illegal.

In the first place it is not clear from these facts what exactly has happened. It may be that the Income Tax Officer told the assessee that he was going to make a proposal of Rs. 4,000 and as a matter of fact did make such a proposal and whether on the advice of the Inspecting Assistant Commissioner he made a second proposal of Rs. 20,000 or not is not quite clear and if that is what is required there is no reason for us to presume that official acts have not been regularly done, and particularly when there is no material before us, it is not possible to come to the conclusion that this has not been done. But supposing this contention was correct, I do not think it to be the law that after the Inspecting Assistant Commissioner had indicated the propriety of imposing a penalty and also the sum which should be imposed that it is necessary for the Income Tax Officer to make another proposal of imposing a penalty of the same amount. the imposition of the penalty of Rs. 20,000 by the Income Tax Officer after having consulted the Inspecting assistant Commissioner would, I think, be quite in accordance with law.

In a case reported as Lachhman Das Mehr Chand v. The Income Tax Appellate Tribunal, Delhi, it is said, - "The idea appears to be that the Income Tax Officer, as being the juniormost authority of the three authorities mentioned in Sub-section (1) of Section 28, should be subjected in this matter to the administrative control of the Inspecting Assistant Commissioner. "These observations seem to show that the object of Section 28(6) was to keep an administrative control over the junior officers like the Income Tax Officers so that the working of the Act was

uniform and proper.

In *Bidie v. General Accident, Fire and life Assurance Corporation Limited* Lord Greene, M. R., observe : - "The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo, so to speak and attribute to them what is sometimes called their natural ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of *prima facie* meaning which you may have to displace or modify. It is to read the statute as a whole and ask one self the questio : In this state, in this context, relating to this subject-matter, what is the true meaning of that word ?"

With these observations I most respectfully agree and I would adopt them for the purpose of construing Section 28. The scheme of the section seems to be that in Sub-section (1) three authorities are authorised to impose the penalty in circumstance given in that section and they are the Income Tax Officer, the Appellate assistant Commissioner and the Appellate Tribunal. In the case of Income Tax Officers it is provided that he shall not impose any penalty without the previous approval of the Inspecting Assistant Commissioner. The Inspecting Assistant Commissioner is not a judicial tribunal. He appears to be an administrative officer in the Income Tax department, and when his previous approval is enjoined it appears to me that the object of the section really is that the Income Tax Officers being junior officers should have proper directions of senior officers and as I have said before there should be uniformity in the matter of Income Tax assessment both with regard to policy and other matters of the administrative necessity.

The question which has been referred to us runs as follows :-

"Whether in the circumstances of the case and in view of Section 28(6), Income Tax Act, there was any irregularity in the imposition of penalty of Rs. 20,000 by the Income Tax Officer even if the allegations contained in the affidavit filed by the appellate before the Appellate Assistant Commissioner be accepted to be well-founded in fact ?"

The only circumstances we have before us are -

- (i) The two returns made on two different dates;
- (ii) the two assessee being called and being given an opportunity to show cause why the penalty should not be imposed; and
- (iii) an affidavit which says that the Income Tax Officer indicated at the time that the recommendation he was going to make was of a particular figure.

Although the word irregularity is mentioned in the section it is not indicated what are the constituents of this irregularity or what are the facts which constitute

irregularity. From what the Advocate for the assessee has been able to tell us, I gather that the irregularity was that a particular sum was proposed and afterwards another sum was imposed as penalty. There is no suggestion that the Inspecting Assistant Commissioner did not come into the picture. As a matter of fact it was submitted that he might have been asked and he even might have indicated the sum which should be imposed as penalty. This, in my opinion, in the circumstances of this case would not be an irregularity at all and I do not think that the law requires that the Income Tax Officer should put up a second proposal to the Inspecting Assistant Commissioner, saying that in accordance with the order of the latter he is sending up a proposal for the imposition of a penalty of the sum indicated by him. As Mr. Sikri has submitted the object of this section seems to be more an administrative rather than anything else.

In the result, therefore. I am of the opinion that the answer to the question submitted for opinion should be in negative. The assessee must pay the costs of this hearing. Counsel fee Rs. 250.

SONI, J. - I agree. Clause (vi) of Section 28 was added in 1939. It did not exist before and the object, it seems to me, was to give the administration a control over the Income Tax Officers. Section 28 in clause (i) provides three authorities who can impose the penalty. They are the Income Tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal. So far as the Tribunal and the Appellate Assistant Commissioner are concerned there is no provision regarding their consulting anybody. It is only when the Income Tax Officer wants to impose a penalty that approval of the Inspecting Assistant Commissioner is to be obtained. It may well be that as the Act provides no appeal for the State regarding the imposition or amount of penalty but only provides an appeal by the assessee, it is deemed necessary for the Income Tax Officer to get the approval of the Inspecting Assistant Commissioner of Income Tax regarding both the propriety of imposing a penalty as well as the figure of the penalty. In the present case there is no suggestion made by the counsel for the assessee regarding the propriety of the imposition of the penalty. His submission is merely that the figure that was originally proposed by the Income Tax Officer was Rs. 4,000 but later on the penalty imposed was Rs. 20,000. His contention is that the figure of Rs. 20,000 had not the approval of the Inspecting Assistant Commissioner because according to law the Income Tax Officer should have sent up a second proposal to which the Inspecting Assistant Commissioner should have given his concurrence. I do not agree that there should be a written second proposal. What is necessary, according to my opinion, is that the Income Tax Officer and the Inspecting Assistant Commissioner of Income Tax should concur in the imposition of a particular figure. Of course they must concur in the imposition of the penalty and the consultation whether by word of mouth or on the telephone or by written communication would serve the purpose. The object of insertion of this new clause (vi) to Section 28 appears to me to be that a superior officer should know what is happening in the department and the proper working of the department being under him he should be consulted as to what

his subordinate officer is doing. So far as the assessee himself is concerned he has no grievance. A right of the appeal is given to him and the appellate authorities need not consult anybody. Therefore, in my opinion, there is no irregularity committed qua the assessee has no grievance. I agree in the answer proposed by my learned brother that this reference be answered in the negative and that the department must have its costs.

Reference answered in the negative.