
(1977) 04 CAL CK 0022
In the Calcutta High Court
Case No : C.R. No. 2942 (W) of 1974

Kshetra Mohan Roy

APPELLANT

Vs

Income Tax Officer, "A" Ward and Others

RESPONDENT

Date of Decision : 22-04-1977

Acts Referred:

Income Tax Act, 1961 — Section 271, 271(1), 274

Citation : 81 CWN 786 : (1983) 139 ITR 441

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : Mihir Lal Bhattacharyya, for the Appellant; Ajit Kumar Sen Gupta, for the Respondent

Judgement

T.K. Basu, J.—In this rule the petitioner challenges a notice dated the March 6, 1974, purported to have been issued u/s 274 read with Section 271 of the I.T. Act, 1961 (hereinafter referred to as the Act). Although several grounds have been taken in this petition challenging the notice, this rule can be disposed of on a single ground. It is now well settled that before a notice u/s 274 read with Section 271 can be validly issued, the ITO must be satisfied in the course of the assessment proceedings that the assessee has concealed the particulars of his income or has furnished inaccurate particulars of his income. If any authority is needed for this proposition, a reference may be made in my own judgment in the case of Stadmed (P.) Ltd. Vs. Income Tax Officer, "H" Ward and Others, , as also the un- reported decision of Amiya Kumar Mookerji J. in C.R. Nos. 298(W) and 299 (W) of 1971 (Turner Morrison and Company Limited v. IAC of Income Tax, Range II). These cases have fairly established the principle that the condition precedent for the assumption of jurisdiction for the issue of a notice proposing to impose a penalty u/s 274 read with Section 271 of the Act is that the ITO should be satisfied that the assessee had concealed the particulars of his income or had deliberately furnished inaccurate particulars of such income.

2. In the instant case, a direct challenge had been thrown by the petitioner that

there was no recorded satisfaction of the ITO in the course of the assessment proceedings that he was so satisfied before he directed the impugned notice for the imposition of penalty to be issued.

3. Mr. Mihir Lal Bhattacharyya, learned advocate appearing on behalf of the petitioner, has drawn my attention to the order of assessment which has been set out as annex. B to the petition. On the basis of the order of assessment, it is contended that there is nothing to show that the ITO was satisfied that the petitioner had concealed the particulars of his income or has furnished inaccurate particulars of income. My attention is drawn also to the affidavit-in-opposition filed by the ITO in answer to the rule. It is submitted that there was no statement that the ITO was at any stage in the course of the assessment proceedings satisfied that the petitioner was guilty of concealment or of furnishing inaccurate particulars of his income.

4. Mr. Ajit Sengupta, learned counsel appearing on behalf of the Revenue, draws my attention to a decision of Sabyasachi Mukherji J. in the case of M/s. Becker Gray & Co. Ltd. v. ITO reported in 1975 CHN 369. This case appears to have decided that a show-cause notice for the concealment of income was bad for not containing the conditions of Clause (c) of Section 271(1) and for being vague as the particulars of the concealment were not given. I do not see how the decision is of any assistance to the Revenue. What is challenged in the present case is that the condition precedent for a valid issue of the impugned notice are not present in the instant case. The decision of Sabyasachi Mukharji J. does not appear to have touched this point.

5. My attention was drawn by Mr. Mihir Lal Bhattacharyya, on behalf of the petitioner, to a decision of the Madhya Pradesh High Court in the case of Commissioner of Income Tax Vs. Navnitlal M. Mehta, of the report after reviewing a number of authorities, Naik J. observed as follows :

"It has been held that the decision of the Bombay High Court that proceedings u/s 28(1)(c) of the Act for imposing a penalty are penal proceedings and not mere proceedings for assessment of tax and, being in the nature of criminal proceedings, the burden is on the department to prove that the amounts added in the assessment were the assessee's income and that that income was concealed or false particulars of it were given by the assessee and that the mere unsatisfactory nature or falsity of the explanation given by the assessee is not sufficient for coming to the conclusion that the receipt in question was income and there has been concealment of such income "

6. In the light of the above decision, my attention is drawn to para. 7 of the affidavit-in-opposition where it is stated that the petitioner failed to explain the nature and source of certain amounts received by him from different persons in the relevant assessment year by producing satisfactory evidence. This, it is submitted, is not sufficient to warrant the issue of a notice proposing to impose penalty. Although in para. 9, there is a general statement that the ITO was

satisfied that the petitioner has concealed the particulars of his income such satisfaction, however, does not appear from the records of the assessment proceedings.

7. It is now well settled that the decision of the ITO, as regards the concealment or the furnishing of any inaccurate particulars, may be arrived at either before the assessment proceedings are concluded or even thereafter. But such satisfaction, in my view, must appear from the records of the assessment proceedings. In the present case, such satisfaction does not appear to have been recorded anywhere.

8. Mr. Sengupta, for the Revenue, draws my attention to the decision in the case of Commissioner of Income Tax, Madras, and Another Vs. S.V. Angidi Chettiar, . In that case, it was held that u/s 28 of the Indian I.T. Act, 1922 (now repealed) read with Section 44 of that Act, an ITO has the power to make an order u/s 28 imposing a penalty on a firm even after the dissolution of the firm caused by the death of one of the partners. This principle is applicable not only to unregistered firms as there is nothing in Section 44, or the context in which it occurs, to indicate that Section 44 does not apply to registered firms.

9. I fail to see how this decision is of any assistance to the Revenue in the instant case. I am not concerned with registered firm or the dissolution thereof. I, therefore, hold that this decision is of no relevance to the instant case.

10. The contention raised on behalf of the petitioner, therefore, succeeds;

11. In the result, this application succeeds and the Rule is made absolute There will be a writ in the nature of mandamus directing the respondents to forthwith, recall, cancel and withdraw the impugned notice dated the March 6, 1964, being No. (IV)(I)/R-701/A, u/s 274 read with Section 271 of the Act and directing them to forbear from giving effect to the said notice in any manner whatsoever. The respondents will, however, be at liberty to proceed according to law.

12. There will be no order as to costs.

13. Let the operation of this order be stayed for a period of six weeks from date. Any further stay must be obtained from the appeal court.