
(1977) 07 OHC CK 0004

In the Orissa High Court

Case No : Special Jurisdiction Case No. 2 of 1975

M.A. Rahman

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 12-07-1977

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 148, 271(1)

Citation : (1979) 119 ITR 4

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : A. Pasayat, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—On being moved by the assessee, this court directed the Income Tax Tribunal, Cuttack Bench, to state a case and refer the following question for the opinion of the court:

"Whether, on the facts and in the circumstances of the case, it can be held that the assessee had either concealed the particulars of his income or had furnished inaccurate particulars of such income so as to be visited with penalty u/s 271(1) (c) of the Income Tax Act, 1961?"

2. Assessee, an individual, is a contractor by profession and during the financial year ending with March 31, 1964 (assessment year 1964-65), he received payments. In his returns of income filed on May 11, 1964, the assessee disclosed a profit of Rs. 20,000 from business by estimating the profit at 12 1/2% on a total receipt of Rs. 1,60,520. On July 31, 1964, assessment was completed u/s 143(3) of the I.T. Act of 1961 (hereinafter referred to as "the Act") adopting Rs. 20,065 as business income, on the basis of total receipt of Rs. 1,60,520. On September 24, 1964, the ITO gathered from information supplied by the concerned executive engineer that the total receipt by the assessee was Rs. 3,75,953 and not Rs. 1,60,520. Thereupon the assessment was reopened and, in response to a notice u/s 148 of the Act, the assessee filed a fresh return on July

9, 1965, showing business income of Rs. 20,000 as before but explained as follows :

"Total receipt net Rs. 1,60,520 and gross Rs. 3,75,100."

3. Assessee was reassessed to tax on the basis of business income of Rs. 46,881 by adopting 12 1/2% of the gross receipt for determining profit, A proceeding u/s 271(1)(c) of the Act was initiated and the IAC, after hearing the assessee, imposed penalty of Rs. 8,000. The Tribunal dismissed the assessee's appeal and sustained the penalty.

4. At the stage of the preliminary hearing, the assessee's counsel had relied upon the statement in the assessment order where it had been stated that the assessee filed his earlier return on the basis of net receipt of Rs. 1,60,520. In the order calling for a statement of the case, this court said :

"...Undoubtedly there is a lot of difference between the assessee disclosing net receipt at Rs. 1,60,520 and gross receipt at the said amount. If the gross receipt is shown to be Rs. 1,60,520, there would, no doubt, be good reason to hold that the assessee furnished inaccurate particulars....."

5. The real position in regard to the original return is now indicated in the statement of the case. The assessee had then stated :

"Rs. 1,60,520 from C.C. Divisions I and II, Bhubaneswar, profit estimated 12 1/2%."

6. There was thus no statement that the figure disclosed was net and not gross. Admittedly, in all previous returns, profit was being calculated on the gross receipt. If the assessee intended to change the basis and wanted that profits should be calculated on the net receipt basis, it was open to him to disclose the gross receipt, indicate the recoveries and specifically state that the amount disclosed was net and not gross receipt. In the absence of such specification and on the basis of the previous practice, the disclosure in the return was misleading.

7. The IAC and the Appellate Tribunal have examined the circumstances of the case and have come to the conclusion of fact that the assessee had concealed the particulars of his income. We do not think we can come to hold on the materials available before us that the finding is not legally available to be reached.

8. Our answer, therefore, is in the affirmative, that is, in the facts and circumstances of the case, the assessee had concealed the particulars or had furnished inaccurate particulars of his income and, therefore, was liable to penalty u/s 271(1)(c) of the Act.

9. Parties to bear their respective costs of this reference.

N.K. Das, J.

10. I agree.