

(1982) 06 CAL CK 0010
In the Calcutta High Court
Case No : C.R. No. 11941 (W) of 1973

Mohanlal Soni

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-06-1982

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 139(1), 246

Citation : (1983) 33 CTR 193 : 87 CWN 146 : (1983) 143 ITR 436

Hon'ble Judges : Pradyot Kumar Banerjee, J

Bench : Single Bench

Advocate : A.K. Roy Chowdhury, for the Appellant; Balai Pal, A.K. Sengupta and Rupen Mitter, for the Respondent

Judgement

Pradyot Kumar Banerjee, J.—In this rule the petitioner challenges the appellate order passed by the AAC, The appellate order is in the following terms;

" IN THE OFFICE OF THE APPELLATE ASSISTANT COMMISSIONER OF income tax: RANGE : "AF": CALCUTTA

Date of order : 30-12-72 Appeal No. 59. AF/HC/Cal. 71-72.

Instituted on the 17th March, 1972, from the order of the Income Tax Officer of E-Ward/HC/Cal. (Sri P.N. Ghosh):

(1) Year of assessment

?

1967-68

(2) Name of appellant

?

M/s. Mohanlal Soni

(3) Income assessed

?

Rs. 73,970

(4) Tax demanded -- income tax/ Super-tax

?

Rs. 11,366

(5) Section under which assessment was made

?

143(3)

Date of hearing : 28-12-1972

Present for appellant: Sri I.C. Sancheti, Advocate.

APPELLATE order AND GROUND OF DECISION.

The present appeal is against the I.T. assessment order for the assessment year 1967-68 passed by the ITO, E-Ward/HC/Cal. on 31-1-72.

2. At the time of appeal hearing, the objection was taken to the disallowance of general expenses to the tune of Rs. 2,000. Before me it was stated that for the earlier years also there was a disallowance of Rs. 2,500 made by the ITO and the AAC allowed a relief of Rs. 1,000. Keeping the circumstance in view, I reduce the disallowance to Rs. 1,000. The appellant gets a relief of Rs. 1,000 in this regard.

3. The next ground regarding bad debt was not pressed by the representative. Therefore, the disallowance regarding bad debt is confirmed.

4. The next ground that was pressed by the representative is regarding the charging of interest u/s 139(1). However, it is observed that the charging of interest u/s 139(1) is not appealable u/s 246 and, as such, I decline to interfere in this regard.

5. In sum the appellant gets a relief of Rs. 1,000.

6. The ITO is directed to give effect to this order both in the hands of the firm and consequential effect in the hands of the partners.

The appeal is partly allowed.

(Sd.) S. Narasimhan Appellate Asst. Commissioner of Income Tax, Range-AF, Calcutta."

2. The fact leading to the order is that the petitioner is a firm registered under the Indian Partnership Act as well as under the I.T. Act, having at the material period three partners, namely, (1) Shri Mohanlal Soni, (2) Shri Ramgopal Soni,

and (3) Shri Radhakissen Soni, each having 1/3rd share in the partnership business. The petitioner was assessed as such as a registered firm within the meaning of Section 2(7) of the said Act and it is alleged that the method of accounting maintained by the petitioner is "mercantile system" and the accounting period is Dewali year. In compliance with the notice u/s 210 of the I.T. Act for payment of advance Income Tax for the assessment year 1967-68 the petitioner paid the advance tax of Rs. 1,316 on 20th August, 1966, and Rs. 1,711 on 4th February, 1967, amounting to Rs. 3,027. In respect of the period 1968-69, the payment of advance Income Tax was made on 5th March, 1968, the payment being Rs. 1,254. For the period 1969-70, the advance tax of Rs. 3,564 was paid in two instalments, first on 7th December, 1968, and the last one on 13th March, 1969. For the assessment year 1967-68 the petitioner furnished its Income Tax return on 10th July, 1967, showing its income at Rs. 69,751.47. Thereafter, the petitioner found certain discrepancies in the computation of its income and the petitioner furnished a "duplicate revised return" on 5th January, 1970, u/s 139(5) of the said Act and on the basis of the said revised return the petitioner paid further tax of Rs. 1,100 on 19th January, 1972, u/s 140A of the Act. For the assessment year 1969-70, the petitioner furnished the return on 2nd January, 1970, showing the enhanced total income, and on the basis thereof the petitioner paid a further tax of Rs. 1,600 u/s 140A of the I.T. Act. The assessment for the assessment year 1967-68 was completed on 31st January, 1972, u/s 143(3) of the said Act by which the ITO charged interest of Rs. 7,415 u/s 139(1) of the Act. In respect of the assessment years 1968-69 and 1969-70 the petitioner was assessed on an income of Rs. 71,935 and Rs. 72,336. The respondent No. 4, ITO, charged interest u/s 139(1) of the Act for the two assessment years amounting to Rs. 3,661 and Rs. 1,080. Being aggrieved by the said order of assessment, three appeals were made to the AAC and a similar order, as hereinbefore stated, was passed. In so far as the assessment years 1967-68 and 1969-70, the interest charged u/s 139(1) of the Act was upheld holding therein that the appeals as against the interest charged are not maintainable. Being aggrieved by the said order of the ITO and the appellate order, the petitioner moved this court and obtained the present rule. At the outset it must be stated that the finding of the AAC that no appeal lay against the order passed u/s 139(1) of the I.T. Act is patently wrong. The charging of interest u/s 139(1) is, according to me, appealable u/s 246 of the I.T. Act. Therefore, in so far as the charge of interest is concerned, the learned AAC must re-hear the appeal to that extent. The order portion of that order, according to me, is to be affirmed, because, in my opinion, the argument advanced by Mr. Roy Chowdhury that Section 139(1) is ultra vires Article 14 of the Constitution of India is misconceived.

3. Mr. Roy Chowdhury relied upon the two cases in support of his contention. The case, M. Nagappa and Others Vs. Income Tax Officer, Central Circle I, Bangalore and Others, was affirmed in the case in Addl. Commissioner of Income Tax, Mysore and Others Vs. Mahadeshwara Lorry Service, . It is argued by Mr. Roy

Chowdhury that u/s 139(1) proviso, Clause (iii)(a), the equation of registered firm and unregistered firm is ultra vires Article 14 of the Constitution. The case as hereinbefore stated supports Mr. Roy Chowdhury's contention but with due respect to the Hon'ble judges of the Division Bench of the Karnataka High Court, I am not able to accept the principles laid down in the said decision. In the case, Jain Bros. and Others Vs. The Union of India (UOI) and Others, , the Supreme Court held as follows (p. 118):

"Lastly, the challenge to Section 271 of the Act of 1961, on the ground of contravention of Article 14 may be considered. According to that provision when the person liable to penalty is a registered firm then notwithstanding anything contained in the other provisions of the Act of 1961, the penalty imposable under Sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm. It is pointed out that in the case of assesseees other than registered firms the maximum penalty imposable u/s 271(1) (i) cannot exceed in the aggregate 50% of the tax payable by the assessee; whereas in the case of a registered firm the maximum penalty is not made to depend upon the tax assessed on or payable by such firm. On the contrary, the registered firm will have to pay the same penalty as an unregistered firm which may far exceed the maximum limit of 50% prescribed by the above provision. This, according to the appellants, constitutes discrimination under Article 14 of the Constitution. Now, a firm, when registered, is treated as a separate entity liable to tax. After 1956 it has to pay tax at a special reduced rate. If a firm got itself registered the partners were entitled to certain benefits and advantages. It was, however, open to the Legislature to say that once a registered firm committed a default attracting penalty, it should be deemed or considered to be an unregistered firm for the purpose of it's imposition. No question of discrimination under Article 14 can arise in such a situation."

4. I respectfully disagree with the view of the Division Bench of the Karnataka High Court to the effect that the distinction made by the Hon'ble judges of the Supreme Court does not apply. On the other hand, in my opinion, for the delay in filing the return, the registered firm by the operation of law has to pay the same penalty as an unregistered firm has to pay. It is open to the Legislature as it has been stated that once the registered firm committed a default attracting penalty, it should be deemed to be an unregistered firm for the purpose of imposition. In such a case, in my opinion, no discrimination between the same class of persons which attracts the provision of Article 14 of the Constitution arises because, by the operation of law, as soon as the registered firm makes a default, it is treated as unregistered firm and, therefore, all the unregistered firms are equally treated under the said section. In my opinion, the same view was taken by the Madras High Court in the lease of Mahendrakumar Iswarlal and Co. and Another Vs. Union of India (UOI), . It has been held by the Madras High Court that it is only in cases where the returns have been withheld without sufficient cause, that the interest contemplated u/s 139(1) is levied. Therefore, the prove to Clause (iii)(a) of Section 139(1) cannot be said to be unreasonable or discriminatory.

5. In the circumstances, therefore, the rule is made absolute to the extent indicated above. The AAC will re-hear the appeal in so far as the interest is concerned and dispose of the same in accordance with law. I hereby affirm the other portion of the appellate order. There will be no order as to costs.

6. The same order was passed in respect of the other two appeals filed for the assessment years 1969-70 and 1970-71.

7. Let the operation of this order be stayed for four weeks from to-day.