
(1979) 07 AHC CK 0047
In the Allahabad High Court
Case No : S.T.R. No. 454 of 1978

Narain Swarup Jain

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-07-1979

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1980) 45 STC 471

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : Dhan Prakash, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—On the facts found the only question that arises is whether imposition of penalty u/s 15-A(1)(b) based only on the finding in assessment proceedings can be upheld. For the assessment year 1965-66, the proceedings u/s 15-A(1)(b) were initiated as the assessee had concealed its turnover and deliberately furnished inaccurate particulars. Against imposition of penalty the assessee filed an appeal which was allowed and the case was sent back for decision afresh. After remand fresh order imposing penalty was passed which was maintained in appeal although turnover was reduced. In revision it was held that the department did not lead any independent evidence, yet the finding recorded in the assessment proceedings that the books were not maintained in the ordinary course of business was good evidence and this taken along with surrounding circumstances, namely, non-production of seized material before the revising authority furnished material for imposing penalty. For this reliance was placed on Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , a well-known case on Section 28(1) of the Income Tax Act.

2. The revising authority did not appreciate the import of the decision. The admissibility of the assessment order did not absolve the department of its

primary responsibility to establish that the concealment was deliberate. It needs no emphasis that the burden to establish the necessary ingredients of concealment and deliberate furnishing of inaccurate particulars is on the department. The penalty proceedings are not continuation of the assessment proceedings. They are independent and have to be decided on independent evidence. In Income Tax matters the view taken by this Court was that penalty proceedings are also assessment proceedings. This was not approved by the Supreme Court in *Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, .* and it was held that penalty proceedings are quasi-criminal in nature. It was, therefore, necessary for the department to establish the necessary facts from which an inference could be drawn that the assessee was guilty of the offences. If the finding in the assessment proceedings were enough the section would have been differently worded. The legislation has put ample safeguards to restrict exercise of power in limited cases. It is not automatic in best judgment assessment and rejection of accounts.

3. In *Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, .* the Supreme Court laid down two principles. One that the order passed in the assessment proceedings was admissible and the other that it cannot be said that the finding given in the assessment proceedings for determining or computing the tax is conclusive. However it is good evidence. Before penalty could be imposed the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. If the argument of the standing counsel that the finding, if it is of concealment, is sufficient for imposition of penalty is accepted then the statement of law by the Supreme Court that it is not conclusive cannot be reconciled by subsequent sentences. As then no surrounding circumstances are needed.

4. The revising authority picked out one of the principles that it was good evidence but failed to appreciate two other principles that it was not conclusive and was to be examined with surrounding circumstances. For the "circumstances, the revising authority adopted a novel procedure. In assessment the rejection of account books was based on survey dated 3rd October, 1976, when certain loose papers, diary and exercise books were found. He asked the assessee to produce them before him and as it failed because they were misplaced he drew an inference that other circumstances to impose penalty were present. This was contrary to accepted principles of imposition of penalty. It could not be assumed that the turnover was concealed as the assessee failed to satisfy that the entries in papers seized at the time of survey were incorrect.

5. In the result, this revision succeeds and is allowed. The order passed by the revising authority is set aside. The question of law raised by the assessee is decided in its favour by saying that in the absence of any circumstance or evidence other than the finding in the assessment proceedings no penalty could

be levied. The assessee shall be entitled to its cost which is assessed at Rs. 200. The fee of the learned standing counsel is assessed at Rs. 100.