

(1978) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 1 of 1973

Nemichand Ganeshmal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-07-1978

Acts Referred:

Income Tax Act, 1961 — Section 139, 139(1), 139(4), 271, 276CC

Citation : (1980) 124 ITR 438

Hon'ble Judges : G.P. Singh, Acting C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; P.S. Khirwadkar, for the Respondent

Judgement

G.P. Singh, Actg. C.J.

1. This is a reference by the Income Tax Appellate Tribunal u/s 256(1) of the I.T. Act, 1961, at the instance of the assessee, referring for our answer the following questions of law :

" (1) Whether, on the facts and in the circumstances of the case, when interest under Clause (iii) of the proviso to Section 139(1) was levied, the penalty imposed u/s 271(l)(a) is legal ?

(2) Whether, on the facts and in the circumstances of the case, when the assessee had filed the return of income within the time allowed under the provisions of Section 139(4), the penalty imposed u/s 271(l)(a) was legal ?

(3) Whether, on the facts and in the circumstances of the case, when the departmental authorities had not found that the assessee's conduct was guilty or contumacious in delaying the filing of the return, the penalty imposed u/s 271(l)(a) was legal ?

(4) Whether, on the facts and in the circumstances of the case, it is legal to determine the amount of penalty payable u/s 271(l)(a) as a proportion of the * tax " inclusive of the additional surcharge levied by virtue of the Compulsory

Deposit Scheme, 1963 ? "

2. The relevant assessment year is 1963-64, the previous year ended on Diwali 1962. The assessee was required to file his return u/s 139(1) of the I.T. Act, 1961, by 30th June, 1963. The return was filed on 9th April, 1964, and thus there was a delay of 9 months. A penalty of Rs. 2,971 was imposed on the assessee by the ITO u/s 271(l)(a) of the Act. The penalty was maintained in appeal by the AAC and the Income Tax Appellate Tribunal,

3. Question No. 1 is concluded by the decision of this court in *Todarmal Safarishmal Lashkar Vs. Commissioner of Income Tax*, . Following that decision, question No. 1 is answered in the affirmative, in favour of the department and against the assessee.

4. Question No. 2 is also concluded in favour of the department by a decision of this court in *Chunnilal and Bros. Vs. Commissioner of Income Tax*, . Following that decision, the question is answered in the affirmative, in favour of the department and against the assessee.

5. Question No. 4 is also concluded in favour of the department by the decision of the Supreme Court in *Commissioner of Income Tax, Kerala Vs. K. Srinivasan*, . Following that decision, we answer the said question in the affirmative, in favour of the department and against the assessee.

6. Now remains question No, 3. The assessee submitted some explanation for not filing the return in time which was not accepted. Before the Tribunal, the assessee did not press for acceptance of his explanation. The Tribunal's finding in this respect is that the counsel for the assessee did not put forward any argument or material to state that there was reasonable cause for the delay and that, in the absence of any valid explanation, it had to be held that there was no reasonable cause for the delay in filing the return.

7. The I.T. authorities including the Tribunal have not given any finding on the point whether the assessee in delaying the return was guilty of conduct, contumacious or dishonest. The assessee's contention is that in the absence of a positive finding on this point no penalty could be imposed u/s 271(1)(a). The argument in support of this contention is that contumacious or dishonest conduct or, in other words, mens rea is impliedly an essential ingredient of that section. Reliance for this argument is placed on the cases of *Hindustan Steel Ltd. Vs. State of Orissa*, , *Commissioner of Income Tax, West Bengal I*, and *Another Vs. Anwar Ali*, (SCJ and *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra* [1975] 35 STC 571.

8. A penalty imposed for tax avoidance is a civil obligation and not a crime (see *Corpus Juris Secundum*, Vol. 85, p. 580). This is specially true when the relevant taxing statute like the I.T. Act, 1961, contains separate provisions for imposition of penalty and for punishing the assessee for criminal offences relating to tax delinquency. However, we will assume for the purpose of this case that the

provision in Section 271(1)(a) for imposition of penalty is quasi-criminal in nature. The section does not say that the assessee should be guilty of contumacious or dishonest conduct for attracting the penalty provided therein. All that it says is that he should have failed to file the return of his total income within time " without reasonable cause ". There is a rule of construction that there is a presumption that in a statutory offence mens rea or guilty intent is a necessary ingredient of the offence. But the presumption arising from this rule of construction is liable to be displaced by a consideration of the words of the statute and the subject matter with which it deals. The well-known case of *Sherras v. De Rutzen* [1895] 1 QB 918 ; [1895] 1 All ER 1167 which is cited as an authoritative exposition of the rule, itself recognises that the presumption is normally not applicable to revenue statutes (p. 1169). The exception is founded on the view that the acts prohibited by revenue statutes are not criminal in any real sense but are acts which in the public interest are prohibited under a penalty. The exception is recognised in later cases *Bruhn v. King* [1909] AC 317 (PC) ; *State of Maharashtra Vs. Hans George* , ; *Patel v. Comptroller of Customs* [1965] 3 All ER 593 (PC); *Comptroller of Customs v. Western Electric Co. Ltd.* [1965] 3 All ER 599 (PC) . The Supreme Court in *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, recently held that " the classical view that " no mens rea, no crime " has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea ". In the light of these principles, if we examine the language and subject matter of Section 271(1)(a) and compare it with Section 276CC, the conclusion inevitably follows that the presumption, if any, of existence of mens rea is rebutted. Section 276CC, which makes failure to furnish returns of income in due time a criminal offence, requires that the failure must be wilful. The words used in the section are : " If a person wilfully fails to furnish in due time the return of income." In contrast, the words used in Section 271(1)(a) are : "Any person has without reasonable cause failed to furnish the return--". If Parliament intended that to attract the penalty u/s 271(1)(a) the assessee must be guilty of contumacious or dishonest conduct in failing to furnish the return in time, this section like Section 276CC, would have used the word " wilfully " in place of the words " without reasonable cause ". We are clearly of opinion that the imposition of penalty is not vitiated for the reason that the I.T. authorities did not record a finding that the assessee was guilty of contumacious or dishonest conduct in failing to furnish the return of his income in time.

9. The Supreme Court in *Hindustan Steel Ltd. Vs. State of Orissa*, did not deal with Section 271(1)(a) of the Act. The case related to the Orissa Sales Tax Act. The general observation in that case that ".....penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation ", cannot be applied in every case without reference to the words

used by the Legislature. These observations, in our opinion, cannot be any authority for the contention that u/s 271(1)(a) the I.T. authorities must find some extra mental element apart" from finding that the assessee had failed to furnish the return without reasonable cause. The case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, related to Section 28(1)(c) of the Indian LT. Act, 1922, which corresponds to Section 271(1)(c) of the LT. Act, 1961, and it deals with burden of proof of concealment of income. It cannot be applied for construing Section 271(1)(c). The case of Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, also related to a Sales Tax Act. There are some general observations in this case (p. 581) that Sections 270 and 271 of the LT. Act provide for imposition of penalty on contumacious or fraudulent assesseees. We are unable to read these observations as authoritative exposition of Section 271(1)(a). The recent decision of the Supreme Court in R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, is a clear authority on the point that mens rea or guilty intent is not in every case a necessary ingredient of a penalty provision in a taxing statute.

10. The conclusion reached by us is supported by three Full Bench decisions, viz., Commissioner of Income Tax Vs. Gujarat Travancore Agency, , Commissioner of Income Tax Vs. Gangaram Chapolia, and ADDL. COMMISSIONER OF Income Tax, A.P., AND ANOTHER Vs. DARGAPANDARINATH TULJAYYA and CO., . We respectfully agree with these decisions. The Gujarat High Court in Addl. Commissioner of Income Tax, Gujarat Vs. I.M. Patel and Co., has taken a somewhat different view with which we respectfully differ.

11. For the reasons given above, question No. 3 is also answered in the affirmative and in favour of the department. Thus, all the questions referred are answered in the affirmative, in favour of the department and against the assessee. There shall be no order as to costs.