

(1971) 08 KL CK 0045

In the High Court Of Kerala

Case No : Income Tax Reference No. 1 of 1969

P.

APPELLANT

Vs

Devassy V. Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-08-1971

Acts Referred:

Income Tax Act, 1961 — Section 139, 148, 256, 271

Citation : (1972) 84 ITR 502

Judgement

Mathew, J.—This is a reference at the instance of the assessee u/s 256(1) of the Income Tax Act, 1961.

2. The question of law referred is:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in sustaining the order of penalty u/s 271(1)(a) of the Income Tax Act, 1961 ?

3. The assessment year in question is 1958-59, the accounting year being the calendar year 1957. The assessee was a partner in the firm of St. Georges Oil, Flour and Rice Mills. The first year of assessment of the firm was 1958-59; the firm filed an application for registration of the firm on December 23, 1957; an order granting registration was passed on February 28, 1963; the assessee filed his individual return on March 12, 1963, showing his share of income from the firm; the Income Tax Officer initiated proceedings for imposition of penalty u/s 271(1)(a) on the ground that the assessee defaulted to file the return within the time allowed. A show-cause notice was issued to the assessee asking him to show cause why penalty should not be imposed. The assessee filed an explanation stating that he was "under the honest belief that the individual return of the firms partners need be filed only after registration was granted to the firm" and that "if the firm was treated as unregistered, the partners would not have been liable to file individual returns." The explanation was not acceptable to the Income Tax Officer. He, therefore, imposed a penalty of Rs. 14,650. The assessee filed an appeal before the Appellate Assistant

Commissioner. The Appellate Assistant Commissioner dismissed the appeal. Against this order the assessee filed an appeal to the Appellate Tribunal. Two contentions were raised before the Tribunal by the assessee. One was that u/s 271(1)(a) it was necessary that two conditions must be satisfied before penalty can be imposed. They were that the assessee has without reasonable cause failed to furnish the return within the time allowed, and that he has failed to furnish it in the manner required by sub-section (1) of section 139. The Tribunal did not accept the contention. It held that, as the assessee failed to furnish the return within the time allowed, the penalty under the sub-section could be imposed. The second contention was that the assessee bona fide believed that he need file the return only after the firm has been granted registration, and, therefore, he had reasonable cause for not filing the return within the time allowed. The Tribunal did not specifically find whether there was reasonable cause for the assessee in not filing the return in time, but confirmed the order of the Appellate Assistant Commissioner. The Tribunal reduced the quantum of the penalty.

4. Section 271(1)(a) provides:

271. (1) If the Income Tax Officer or the Appellate Assistant Commissioner, in the course of any proceedings under this Act, is satisfied that any person -

(a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of section 139 or by notice given under sub-section (2) of section 139 or section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 139 or by such notice, as the case may be, or.....

he may direct that such person shall pay by way of penalty, -

The first argument for the assessee was that for imposition of penalty under the sub-section two conditions must be satisfied, namely, that there must be a failure to file the return within time allowed and also a failure to file the return in the manner prescribed. The contention was that although the assessee has not filed the return within the time allowed, when he filed it he had filed it in the manner prescribed and as one of the conditions was not satisfied, no penalty can be imposed. In other words, counsel for the assessee argued on the basis of the ruling of this court in *Abraham v. Sales Tax Officer, Ponkunnam*, which was affirmed by the Supreme Court in *Sales Tax Officer v. Abraham*, that the words "in the manner prescribed" would not take in the time element, and, therefore, by filing the return containing the relevant particulars, though out of time, the assessee has not failed to file the return in the manner prescribed, and, therefore, one of the conditions necessary to be satisfied for imposing the penalty under the sub-section was absent. We are unable to accept this contention. An assessee is required to file the return within the time allowed and in the manner prescribed in order that the Income Tax Officer may complete the

assessment within the period specified in the Income Tax Act. If the return is not filed in time or, if filed in time, it does not contain all the particulars required, it will not be possible for the Income Tax Officer to complete the assessment within the period specified in the Act. In other words, the object of the legislature in insisting upon the assessee filing the return within the time and in the manner prescribed is to enable the Income Tax Officer to complete the assessment within a period of four years as specified in the Act and that object will be frustrated unless the assessee files the return within the time allowed and in the manner prescribed. To carry out the object of the legislature it is necessary to attach a sanction for the failure to fulfill any of the two conditions. If the object is clear, we do not think the use of the conjunctive word "and" in the sub-section is conclusive. The word "and" has generally a cumulative sense, and is thus the antithesis of disjunctive "or"; but occasionally it is permissible to read "and" as "or" if the context so requires. In *Ishwar Singh Bindra v. State of U. P.*, it is observed:

And has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a context, reads as or. Sometimes to carry out the intention of the legislature it is found necessary to read the conjunctions or and and one for the other.

5. In *Maxwell on the Interpretation of Statutes*, 12th edition, at page 232, it is observed:

In ordinary usage, and is conjunctive and or disjunctive. But to carry out the intention of the legislature it may be necessary to read and in place of the conjunction or and vice versa.

6. We are of opinion that it is permissible to impose a penalty on an assessee who has failed to furnish the return without reasonable cause within the time, though he has filed it in the manner prescribed after the time.

7. There cannot be any dispute in view of the provisions of sections 14(2), 16 and 22 of the Income Tax Act, 1922, and counsel for the assessee also did not dispute that the assessee was bound to file a return of his income from other sources as well as his share of the income from the partnership. So, in this case there can be no controversy that the assessee was bound to file the return on or before July 5, 1958. The explanation given by the assessee for not filing the return on or before July 5, 1958, was that he was under the bona fide belief that the return need be filed only after registration was granted to the firm and that if the firm was treated as an unregistered firm he need not file any individual return at all. The explanation of the assessee that he bona fide believed that he need file the return only when registration was granted to the firm was in a way accepted by the Tribunal because the Tribunal said that "there are several mitigating circumstances for the delay in filing the return". We do not understand what those mitigating circumstances are, except that the assessee had

reasonable ground for believing that he need file the return only after registration has been granted to the firm. As held by the Supreme Court in Commissioner of Income Tax v. Anwar Ali, proceedings for imposition of penalty are penal in character. And, unless there are materials to show that the assessee has failed to file the return within the time without reasonable cause, no penalty can be imposed. The mere failure to file the return within the time allowed will not make the assessee liable to penalty. The department must prove that the assessee had no reasonable cause for not filing it within time. As we have indicated, the Appellate Tribunal has accepted that there were several mitigating circumstances for the delay in filing the return. Counsel for the revenue referred to Salmond on Jurisprudence, page 395, paragraph 102, and contended that every person is presumed to know the law, and, therefore, the assessee had no reasonable cause for not filing the return in time. But, there is no presumption that everybody knows the law, though it is often so stated.

Sometimes it is said that every man is presumed to know the law, but this is only a slovenly way of stating the truth that ignorance of the law is not in general an excuse. (See A First Book of Jurisprudence by Pollock, at page 163).

8. In *Martindale v. Falkner*, Maule J. said:

There is no presumption in this country that every person knows the law : it would be contrary to common sense and reason if it were so.

9. In *Criminal Law* by Glanville Williams, at page 385, it is stated:

The view that everyone is presumed to know the law is now generally rejected; it is not a true proportion of law, and even if it were, it would only be a legal fiction, not a moral justification. Lord Mansfield drily observed that it would be very hard upon the profession, if the law was so certain, that everybody knew it; and Maule J. is credited with the observation that everybody is presumed to know the law except His Majestys judges, who have a Court of Appeal set over them to put them right. The idea that the law can be known by everyone is to-day, in the planned and welfare State, more ludicrous than ever.

10. In *Hindustan Steel Ltd. v. State of Orissa*, the Supreme Court observed that the order imposing a penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and that penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conscious disregard of its obligation. If the assessee here bona fide thought that he need file the return after the firm has been granted registration - that in effect is the finding of the Tribunal, though the Tribunal characterised it only as mitigating circumstance - we do not think that the imposition of the penalty was warranted for the mere failure to furnish the return within the time in the absence of any proof that the assessee acted deliberately in defiance of law or was guilty of conscious disregard of its obligation. We, therefore, come to the conclusion that there was reasonable cause for the assessee in not filing the return within the time allowed, and that the imposition of the penalty was not

warranted.

11. We answer the question referred in the negative and in favour of the assessee. We make no order as to costs.

12. A copy of this judgment will be sent to the Appellate Tribunal under the seal of the High Court and the signature of the Registrar.

13. Question answered in the negative.