

(1978) 05 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 728 of 1972

RAMLAL AGARWAL

APPELLANT

Vs

COMMISSIONER OF Income Tax, M.P.

RESPONDENT

Date of Decision : 02-05-1978

Acts Referred:

Income Tax Act, 1961 — Section 139, 271

Citation : (1982) 134 ITR 342

Hon'ble Judges : Verma, J

Bench : Division Bench

Judgement

VERMA J. - These are two references made at the instance of the assessee under s. 256(1) of the I.T. Act, 1961, to answer certain common questions which are said to arise out of two similar orders of the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur, in I.T.A. No. 257 (Nag)/69-70 dated April 20, 1972, and I.T.A. No. 263 (Nag)/69-70 dated April 21, 1972. The common questions referred by these two references to this court are as follows:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee did not have a reasonable cause for furnishing the return of income within the time allowed u/s 139(1) ?

(2) Whether, on the facts and in the circumstances of the case, the penalty levied u/s 271(1)(a) is legal when a penalty u/s 271(1)(a) was also levied on the firm, in which the assessee was a partner, treating it as an unregistered firm and when the assessee's only share was the share in the firm ?

(3) 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(1)(a) is legal ?

(4) 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(1)(a) was legal ?

(5) Whether, on the facts and in the circumstances of the case, when the departmental authorities had not found that the assessee's conduct was contumacious in delaying the filing of the return, the penalty imposed u/s 271(1)(a) was legal ?"

The two assesseees are Ramlal Agarwal and Ramnarain Agarwal, the two partners of a partnership firm carrying on business at Raipur under the name and style of M/s. Ramlal Ramgopal Agarwal. The relevant assessment year in each case is 1963-64 for which the accounting period ended on Diwali 1962. Both these references arise out of the Tribunal's order imposing penalty under s. 271(1)(a) of the I.T. Act, 1961 (hereinafter called "the Act"), on the two partners, in addition to an imposition of penalty under the same provision also on the firm, M/s. Ramlal Ramgopal Agarwal of which these two assesseees are the partners. The imposition of penalty on the firm led to a reference under s. 256(1) of the Act to this court which we have decided today answering the questions referred to us in favour of the revenue and against the assessee, holding that the imposition of penalty on the firm was legal. That is Misc. Civil Case No. 652 of 1972 (Ramlal Ramgopal Agarwal v. CIT) (see p. 338 supra).

The facts which have led to the imposition of penalty on the two partners, in addition to the imposition of penalty on the firm constituted by them, are the same. Those facts are elaborately stated by us in our order passed today in M.C.C. No. 652 of 1972 (Ramlal Ramgopal Agarwal v. CIT). We, accordingly, give herein only those further facts which are necessary for deciding the case of the two partners who are the assesseees in these two references before us.

The return of income for the assessment year 1963-64 was required to be filed by the partnership firm as well as by each of the two partners on or before June 30, 1963, in accordance with the provisions of sub-s. (1) of s. 139 but the same was filed by the firm as well as by each of the two partners only on December 1, 1964. The two partners, namely, Ramlal Agarwal and Ramnarain Agarwal, had no other source of income during the assessment year 1963-64, except their share income from the profits of the partnership firm, M/s. Ramlal Ramgopal Agarwal.

The ITO made the assessment order on March 20, 1968, for the relevant assessment year in the case of each of the two partners and required each of the partners to pay interest amounting to Rs. 57 in accordance with the provisions of sub-cl. (iii) of the proviso to sub-s. (1) of s. 139 of the Act on account of the delay in filing the return. The ITO also initiated proceedings for the imposition of penalty under s. 271(1)(a) of the Act against each of the partners as well as the partnership firm. Rejecting the explanation given by the assessee for the delay in filing the return, the ITO imposed a penalty of Rs. 800 under s. 271(1)(a) on each of the two partners by his orders dated January 7, 1970.

The assesseees then appealed to the AAC against the imposition of the penalty. The AAC affirmed the order of the ITO, rejecting the explanation given by the assessee to explain the delay in filing the return, by his order dated February 28,

1970.

The assessee then appealed to the Income Tax Appellate Tribunal. Before the Tribunal several arguments were advanced on behalf of the assessee. The first argument was that there was a reasonable cause to explain the delay in filing the return by the two partners even though it was conceded that there was no reasonable cause to explain the delay in filing the return of the partnership firm. The Tribunal rejected the explanation given on behalf of the two partners to explain the delay holding that the failure to furnish the return within time by the two partners was also without reasonable cause. It was then urged that the imposition of penalty on a partner of the firm for failure to furnish the return within time, when penalty had also been imposed on the partnership firm for this delay, amounted to imposition of double penalty, particularly when the partner had no other income except the share income from the partnership firm. This argument was also rejected by the Tribunal as untenable. The same argument advanced from different angles also failed before the Tribunal. Another argument advanced on behalf of the assessee was that imposition of penalty under s. 271(1)(a) , in addition to recovery of interest under sub-cl. (iii) of the proviso to sub-s. (1) of s. 139 was illegal and invalid. This argument also failed. The last argument, was that when the return was filed within the time allowed under sub-s. (4) of s. 139 , no penalty could be imposed under s. 271(1)(a). This contention too was rejected. The assessee then sought a reference under s. 256(1) of the Act to this court which have been granted to answer the aforesaid questions.

The aforesaid questions Nos. 1 and 5 are, in substance, only one question. Question No. 5 cannot, therefore, be treated as a separate question, and the question so referred to us is really only question No. 1. It is, no doubt, true that it is for the departmental authorities to decide whether the failure to furnish the return within the time ordinarily allowed was without a reasonable cause or not. If it is held by these authorities that such failure was for a reasonable cause, then no question of imposition of penalty would arise. However, the question whether such failure was "without reasonable cause" or not, is essentially one of fact, which it is for the departmental authorities to decide. Unless the decision of this question requires the application of any principle of law, the same would remain a question of fact. On the facts and in the circumstances of this case, no principle of law required application for deciding whether the assessee's failure to furnish the return was "without reasonable cause" or not. Accordingly, this was a pure question of fact and the finding thereon cannot, therefore, be examined by this court, since, this not being a question of law, could not be referred in the present case to this court for a decision. This is our answer to question Nos. 1 and 5.

We now come to question No. 2. This point is concluded against the assessee by our decision in *Amritlal Somabhai Vs. Commissioner of Income Tax*, We have held therein that penalty under s. 271(1)(a) of the Act was imposable on the

assessee who was a partner of a registered firm, on which also a separate penalty under s. 271(1)(a) had been imposed for not filing the return of income within the time allowed, even though the partners only income was the share income from the firm during that year. For the reasons given by us in *Amritlal Somabhai Vs. Commissioner of Income Tax*, we answer this question against the assessee.

Questions Nos. 3 and 4 in these two references are the same as questions Nos. 1 and 2 in M.C.C. No. 652 of 1972 (*Ramlal Ramgopal Agarwal v. CIT*) (see p. 338 supra) decided by us today. In that reference made at the instance of the partnership firm, M/s. Ramlal Ramgopal Agarwal, we have decided both these questions in favour of the revenue and against the assessee. It is not necessary for us to reiterate herein the reasons for our decision on these questions. For the reasons given by us in our order passed today in M.C.C. No. 652 of 1972 (*Ramlal Ramgopal Agarwal v. CIT* - See p. 338 supra), we decide both these questions in favour of the revenue and against the assessee.

We, accordingly, answer these two references as follows:

Answer to questions Nos. 1 and 5:

They are essentially one and the same question. Question No. 5 is only a different form of question No. 1. On the facts and in the circumstances of the case, the Tribunal's finding that the assessee did not have a reasonable cause for not furnishing the return of income within the time allowed, is a finding of fact and on that finding the penalty imposed under s. 271(1)(a) of the Act was legal.

Answer to question No. 2:

The penalty levied under s. 271(1)(a) on the assessee, a partner of the firm, whose only income was the share income from the firm, is legal when a penalty under s. 271(1)(a) has also been levied on the firm.

Answer to question No. 3:

Imposition of penalty under s. 271(1)(a) is legal when interest under sub-cl. (iii) of the proviso to sub-s. (1) of s. 139 of the Act has also been charged from the assessee.

Answer to question No. 4:

The imposition of penalty under s. 271(1)(a) is legal even though the assessee had filed the return of income within the time allowed under sub s. (4) of s. 139 of the Act.

The reference is answered accordingly. The assessee shall pay the costs of the revenue. Counsels fee in each case, Rs. 150, if certified.