

(1978) 05 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 652 of 1972

Ramlal Ramgopal Agarwal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-05-1978

Acts Referred:

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

Citation : (1982) 134 ITR 338

Hon'ble Judges : A.P. Sen, C.J.;J.S. Verma, J

Bench : Division Bench

Judgement

Verma, J.—This is a reference u/s 256(1) of the I.T. Act, 1961 (hereinafter called "the Act"), made at the instance of the assessee by the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur, to answer certain questions said to arise out of the Tribunal's order dated April 20, 1972, in ITA No. 256 (Nag.)/69-70. These questions are the following, viz:

"(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 charged the penalty imposed u/s 271(1)(a) is legal ?

(2) Whether, on the facts and in the circumstance 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 ?

(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 contumacious in delaying the filing of the return, the penalty imposed u/s 271(1)(a) was legal?"

2. The assessee is a partnership firm carrying on business under the name and style of "M/s. Ramlal Ramgopal Agarwal" at Raipur and it consists of two partners, viz., Ramnarain Agarwal and Ramlal Agarwal. The relevant assessment year is 1963-64, for which the accounting period ended on Diwali, 1962. The

assessee-firm should have filed the return of its income showing a total income of Rs. 30,919 on or before June 30, 1963, in accordance with the provisions of Sub-section(1) of Section 139 of the Act, but the same was filed only on December 1, 1964. The ITO made the assessment by his order dated March 19, 1968, and required the assessee-firm to pay interest amounting to Rs. 670 in accordance with Sub-clause (iii) of the proviso to sub-s. (1) of Section 139, as it then stood, on account of the delay in filing the return. In addition to requiring the assessee-firm to pay interest in this manner for late filing of the return, the ITO also initiated proceedings for the imposition of penalty u/s 271(1)(a) of the Act. Rejecting the explanation given by the assessee-firm for the delay in filing its return, the ITO imposed a penalty of Rs. 2,900 on the assessee-firm u/s 271(1)(a) by his order dated January 7, 1970.

3. The assessee-firm then filed an appeal to the AAC against the imposition of the penalty u/s 271(1)(a) of the Act. The AAC also rejected the assessee-firm's explanation, based on the ignorance of the partners of the firm, for the delay in filing the return and affirmed the ITO's order by his order dated February 28, 1970.

4. The assessee-firm then preferred an appeal to the Tribunal. At the hearing of the appeal, no attempt was made on behalf of the assessee-firm to explain the delay in filing the return on the ground of existence of reasonable cause. The main contention on behalf of the assessee-firm before the Tribunal appears to have been that the imposition of penalty u/s 271(1)(a) was illegal and invalid because the same was in addition to the recovery of interest under Sub-clause (iii) of the proviso to Sub-section (1) of Section 139 of the Act. The Tribunal rejected the assessee's contention. This has led to the making of the present reference by the Tribunal at the instance of the assessee-firm to answer the aforesaid questions.

5. The aforesaid third question may be disposed of at the very outset for the simple reason that it does not arise out of the Tribunal's order on account of which it should not have been referred to this court for decision. In the statement of case, it has been expressly stated that no attempt was made on behalf of the assessee-firm at the time of the hearing of the appeal before the Tribunal, to explain the delay in filing the return on the ground of existence of a reasonable cause for the same. That being so, the Tribunal itself was not called upon to decide the question whether there existed a reasonable cause to explain the delay on account of which penalty may not be imposed on the assessee-firm. There can be no dispute that the ITO does have the discretion not to impose any penalty if it is shown to his satisfaction that there was a reasonable cause to explain the delay in filing the return. Obviously, in the present case, the ITO rejected the assessee's explanation for the delay holding that the delay in filing the return was without a reasonable cause. This finding of the ITO was upheld by the AAC and no attempt was made to challenge the same before the Tribunal. The aforesaid question No. (3), therefore, does not arise for decision in the

present case. We, accordingly, decline to answer the same.

6. We shall now take up the aforesaid question No. (1). The contention of the assessee is that the imposition of a penalty u/s 271(I)(a), in addition to a recovery of interest under Sub-clause (iii) of the proviso to Sub-section (1) of Section 139 for the same act of delay in filing the return, amounts to double penalty and is, therefore, unlawful. This contention has no "merit and is concluded against the assessee by authoritative decisions. It is settled that one and the same act may give rise to more than one liability or obligation under different provisions of law and the adverse consequences so resulting cannot be challenged on the ground that more than one adverse consequence cannot result from one act. Same is the position here. We may refer only to a recent decision of this court in *Todarmal Safarishmal Lashkar Vs. Commissioner of Income Tax*, wherein, while rejecting a similar argument, the Division Bench stated as under (p. 765):

"Adverting now to the second contention that by imposing the penalty, double punishment has been inflicted on the assessee, it must be said that the contention is misconceived.....But interest becomes payable because, by reason of extension of time, the filing of the return would be delayed, which, in its turn, will entail, delay in assessment and consequent delay in realisation of tax from the assessee. Thus, interest is by way of compensation for the delay in realisation of tax. It is not penalty for committing default in filing the return of income within the time allowed, under Sub-section (1) or Sub-section (2) of Section 139 of the Act. Penalty is punishment: it is in terrorem. Therefore, no question arises for imposition of double penalty. The view we take was also taken in *K.C. Vedadri Vs. Commissioner of Income Tax, , Express Newspapers (P.) Ltd. Vs. Income Tax Officer, Administration and Collection and Another, , Additional Commissioner of Income Tax, Gujarat Vs. Santosh Industries, Narandas Paramanand Das Vs. Income Tax Officer and Others, and D.B. Navalgundkar and Co. Vs. Commissioner of Income Tax, Mysore, . See also the principle laid down in M. Ct. Muthiah and Another Vs. Deputy Controller of Estate Duty, Southern Zone, ."*

7. It must, therefore, be held, following the aforesaid settled view on the point, that the imposition of a penalty u/s 271(I)(a) in addition to recovery of interest under Sub-clause (iii) of the proviso to Sub-section (1) of Section 139 of the Act is legal and valid, provided the department takes the view that the delay in filing the return was without a reasonable cause.

8. The only surviving question now is question No. (2). The answer to this question must also be given in favour of the department and against the assessee. Sub-section (4) of Section 139, as it existed at the relevant time up to 1st April, 1968, read as under :

"(4) Any person who has not furnished a return within the time allowed to him under Sub-section (1) or Sub-section (2) may, before the assessment is made,

furnish the return for any previous year at any time before the end of four assessment years from the end of the assessment year to which the return relates and the provisions of Sub-clause (iii) of the proviso to Sub-section (1) shall apply in every such case."

9. It is clear that even in the case of a return filed within the time allowed under Sub-section (4) of Section 139, the provisions of Sub-clause (iii) of the proviso to Sub-section (2) thereof applied, i. e., interest was recoverable in accordance with the provisions of Sub-clause (iii) of the proviso to Sub-section (1) in all such cases. That being so, the result, as regards the question of imposition of penalty, is the same where a return is filed within the time allowed under Sub-section (4) of Section 139 as it is in a case governed by Sub-section (1) thereof. Consequently, there is no difference in question No. (1) and question No. (2), on this basis. For the reasons already given while answering question No. (1) it is, held that the imposition of a penalty u/s 271(l)(a) is legal and valid in the same manner in a case where a return has been filed within the time allowed by Sub-section (4) of Section 139.

10. We, accordingly, answer this reference in favour of the revenue and against the assessee as under :

Answer to question No. (1):

When interest according to the provisions of Sub-clause (iii) of the proviso to Sub-section (1) of Section 139 has been charged from the assessee, the penalty imposed u/s 271(l)(a) of the Act is legal when the department has taken the view that the failure to furnish the return within the time allowed was without a reasonable cause.

Answer to question No. (2):

The penalty imposed u/s 271(l)(a) of the Act is legal on the department taking the view that the failure to furnish the return within the time allowed was without a reasonable cause, even though the assessee had filed the return within the time allowed under Sub-section (4) of Section 139 of the Act.

Answer to question No. (3) :

Does not arise.

11. The reference is answered accordingly. The assessee shall pay the costs of the revenue. Counsel's fee Rs. 150, if certified.