

(1968) 04 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Income Tax Reference No. 51 of 1964

SATPRAKASH RAM NARANJAN

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 03-04-1968

Acts Referred:

Income Tax Act, 1922 — Section 66(1)

Citation : (1969) 1 ILR (P&H) 53 : (1969) 71 ITR 646

Hon'ble Judges : Mehar Singh, C.J.; Shamsheer Bahadur, J

Bench : Full Bench

Judgement

SHAMSHER BAHADUR J. - The language of the question which has been referred to us by the Income Tax Appellate Tribunal under sub-section (1) of section 66 of the Income Tax Act, 1922 (hereinafter called the Act), is somewhat inartistic but the meaning and tenor of it has not been in dispute. The question, which is in a compendious form, is to this effect :

"Whether, on the facts and in the circumstances of the case, the Income Tax Officer, "C" Ward, Jullundur, was not bound to give the assessee an opportunity of being heard inasmuch as the assessee was aware of the change of jurisdiction to this Income Tax officer and did not demand such an opportunity ?"

The confusing aspect of this question would be apparent after the facts giving rise to it have been briefly recapitulated.

The assessee is the registered firm of Messrs. Sat Prakash Ram Naranjan of Nawadshehr, and was assessed for the year 1954-55, the relevant accounting period being the year ending with 12th of April, 1954. Being of the view that a sum of Rs. 47,996 standing in the cash credit accounts of the wives of the partners of the firm (Rs. 11,980-3-10 in each case) had not been accounted for, it was added in the total income of the assessee-firm. Regarding it as concealed income, the Income Tax Officer took action u/s 28(1)(c) of the Act and levied a penalty of Rs. 10,000 with the prior approval of the Inspecting Assistant

Commissioner, Jammu Range, Jammu, in his order of 13th of December, 1960. Sub-section (1) of section 28 of the Act says that :

"If the Income Tax Officer, The Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person....

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he or it may direct that such person shall pay by way of penalty..."

It is to be noted that sub-section (3) of section 28 says that :

"No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard."

It is on the construction of sub-section (3) of section 28 that the decision of this reference must turn.

The assessee appealed from the order of the Income Tax Officer to the Appellate Assistant Commissioner. It may be mentioned at this stage that originally the Income Tax Officer, B-Ward, Jullundur, had jurisdiction over this matter and it was he who actually issued a notice u/s 28 to the assessee on 17th of September, 1958. The assessee, in reply, sent a letter to the Income Tax Officer, B-Ward, on 6th of November, 1958, inter alia, making a request that the matter of levy of penalty should be held over till the disposal of the quantum appeal for the year 1954-55. The matter presumably was allowed to remain in abeyance for a long time. Some time in July, 1959, the jurisdiction over the assessee-firm seems to have been transferred to the Income Tax Officer, C-Ward. The appeal, whose decision the Income Tax Officer, B-Ward, had been requested to await, was disposed of on 2nd of December, 1959. Without any information to the assessee, the Income Tax Officer, C-Ward, more than one year later, on 13th of December, 1960, imposed a penalty of Rs. 10,000 on the assessee. The Appellate Assistant Commissioner decided the appeal of the assessee in his favour on 8th of June, 1962, holding that the Income Tax Officer, C-Ward, to whom the jurisdiction over the assessee had been transferred, had imposed the penalty without complying with the provisions of section 5 (7C) of the Act under which :

"Whenever in respect of any proceeding under this Act an Income Tax authorities ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income Tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor :

Provided that the assessee concerned may demanded that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order for assessment is passed against him he be re-heard :...."

A further appeal by the revenue before the Income Tax Appellate Tribunal resulted in a reversal of positions and the order of the Income Tax Officer was restored. The Appellate Tribunal was of the view that the assessee had come to know of the change of jurisdiction and had made no request to the Income Tax Officer, C-Ward, to allow him an opportunity of being heard. It is these last two findings of fact which have been incorporated in the question under reference and on which the answer to the main question has been made dependent.

Mr. Bhagirath Dass, learned counsel for the assessee, has complained that the question has been so formulated that he is now debarred from questioning the two findings or to ask for a fresh reference. It is, however, submitted by him that, even taking these findings which he is not now in a position to challenge as correct, the assessee having come under the jurisdiction of the Income Tax Officer, C-Ward, an independent obligation devolved on this authority to afford an opportunity to the assessee. It is submitted by the learned counsel that the Income Tax Officer, B-Ward, on the assessee's request embodied in the letter of 6th of November, 1958, must be taken to have acceded to it as no further proceedings had been taken in pursuance of the notice u/s 28 of the Act for a period of more than two years. Although the quantum appeal had been disposed of on 2nd of December, 1959, no further action was taken by the Income Tax Officer, C-Ward, till he passed the order imposing penalty on 13th December, 1960. It is submitted by the counsel that sub-section (7C) of section 5 of the Act also imposed a duty on the Income Tax Officer, C-Ward, to ascertain from the assessee whether or not to continue the proceedings from the stage at which they had been left by the Income Tax Officer, B-Ward. The opportunity contemplated by sub-section (3) of section 28 having been given by the issue of notice by the Income Tax Officer, B-Ward, it followed as a matter of consequence, as contended for on behalf of the department, that the assessee had to keep himself informed about the progress of penalty proceedings from day-to-day. This appears to be somewhat unrealistic approach and it seems to us that the easiest course for the Income Tax Officer, C-Ward, and one which was in conformity with the requirements of natural justice would have been to inform the assessee that the quantum appeal having been disposed of the question of penalty would be taken on an appointed date. How could the assessee be expected to have knowledge of what was happening in the department of the Income Tax Officer, C-Ward, when all that was made known to him was that on his own request the further proceedings had been held in abeyance by the Income Tax Officer, B-Ward? A decision of the Division Bench of the Calcutta High Court in *Calcutta Tanneries (1944) Ltd. v. Commissioner of Income Tax* has been relied upon by Mr. Bhagirath Dass. In the judgment of Chief Justice Lahiri, with whom Bachawat J. (as Mr. Justice Bachawat then was) concurred, it was held that where one Income Tax Officer had initiated penalty proceedings was concluded on September 29, 1951, and a long time thereafter a successor officer passed an order on January 14, 1954, imposing a penalty, without giving an opportunity to the assessee to be heard, the provisions of section 5(7C) of the

Act applied and, though the assessee had failed to exercise his right under the first part of the proviso to section 5(7C) to have the proceedings reopened, it did not lose its right of being heard u/s 28(3) before the officer who had been invested with jurisdiction to continue the penalty proceedings. The successor officer, in the view of Chief Justice Lahiri, had no authority to pass an order penalty without giving the assessee further opportunity of advancing arguments before him. According to this ruling, it is clear that the Income Tax Officer, C-Ward, was bound to give an opportunity to the assessee before passing an order of penalty.

On behalf of the department, Mr. Awasthy has cited a Division Bench judgment of the Rajasthan High Court in *A. C. Metal Works v. Commissioner of Income Tax*. In that case, though one Income Tax Officer had issued notice u/s 28(3) of the Act and the assessee had submitted his explanation in writing, the assessee did not choose to appear before the Income Tax Officer or ask for an opportunity to adduce evidence or addressed arguments, nor did he demand rehearing under the proviso to sub-section (7C) of section 5 when the officer had been transferred. It was held that the succeeding officer had authority to continue the penalty proceedings and impose penalty on the assessee after considering the written representation already filed by him without giving a fresh opportunity of being heard. In the instant case, no explanation had been filed by the assessee and the proceedings before the Income Tax Officer, B-Ward, had remained in a state of suspended animation for a period of two years, when the successor imposed the penalty without giving any opportunity to the assessee and hearing what the assessee may have to say.

Mr. Awasthy places reliance also on the Division Bench authority of the Mysore High Court of Hedge and Ahmed Ali Khan JJ. in *Shop Siddegowda and Family v. Commissioner of Income*. In that case, one Income Tax Officer issued a notice u/s 28(3) to the assessee calling upon him to appear and show cause why penalty should not be levied and the assessee submitted his explanation in writing, but did not choose to appear or ask for an opportunity to adduce evidence or address arguments; it was held that the successor officer had authority, like the Rajasthan case, contains the distinguishing feature that the assessee had given an explanation which alone came to be considered by the successor authority.

Precisely, the same considerations prevailed in another Division Bench authority of the Mysore High Court in *Hulekar and Sons v. Commissioner of Income Tax*. There again, a written representation had been given to one Income Tax Officer and the successor proceeded with the penalty proceedings as the assessee did not seek a fresh opportunity of being heard.

In our opinion, the answer to the reference, therefore, must be made in favour of the assessee. In the circumstances, there would be no order as to costs.

MEHAR SINGH C.J. - I agree.