

(1989) 02 MAD CK 0035
In the Madras High Court
Case No : Tax Case No. 1013 of 1979

S.N. Hamid Abdul Khader

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-02-1989

Acts Referred:

Income Tax Act, 1961 — Section 131, 271(1)

Citation : (1989) 178 ITR 323 : (1989) 46 TAXMAN 244

Hon'ble Judges : V. Ratnam, J; Bhakthavatsalam, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; C.V. Rajan, for the Respondent

Judgement

Ratnam, J.—u/s 256(2) of the Income Tax Act, 1961, (hereinafter referred to as "the Act"), at the instance of the assessee, the following

question of law has been referred for the opinion of this court :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in its conclusion regarding the levy penalty u/s 271(1)(c) of

the Income Tax Act ?

2. The assessee is an individual having share income from a firm, income from property and interest on securities, etc. In respect of the assessment

year 1971-72, the assessee filed a return declaring a total income of Rs. 33,423. In completing the assessment, the Income Tax Officer included a

sum of Rs. 1,00,000 in the total income of the assessee. The amount so included represented a cash credit and the assessee claimed that that

amount related to the encashment of a raffle ticket which required the first prize in the held on September 25, 1970. Apart from some

discrepancies found by the Income Tax Officer in that regard, he also came to

know that the prize winning raffle ticket actually belonged to one Shankar, who was a worker in a hotel. Thereupon, the Income Tax Officer proceeded to collect further information and evidence and after affording an opportunity to the assessee to rebut the same, came to the conclusion that the assessee was not the real owner of the raffle ticket, but had somehow managed to project himself as the winner of the first prize by purchasing the prize winning ticket with his unaccounted money. Besides, adding the sum of Rs. 1,00,000 in the total income of the assessee as income from undisclosed sources, penalty proceedings were also initiated and after hearing the assessee, the Inspecting Assistant Commissioner imposed on the assessee a penalty of Rs. 1,00,000 u/s 271(1)(c) of the Act. Aggrieved by this, the assessee preferred an appeal before the Tribunal. On a consideration of the entire materials, the Tribunal found that independent evidence collected by the Income Tax Officer from several sources clearly established that the one Shankar had purchased the prize winning ticket and had also won the prize and that the assessee who encash the prize winning ticket was not in a position to establish the purchase of the ticket and, therefore, it was not a mere case of the explanation offered by the assessee having been disbelieved, but the uncontradicted circumstantial evidence was such that it established that the assessee had not purchased the ticket before it won the prize. In that view, the Tribunal upheld the order imposing a penalty on the assessee. That is how the question of law referred to earlier has come up before this court.

3. We may briefly refer to the several steps taken by the Department to ascertain whether the assessee had purchased the ticket which eventually won the prize. In the course of his examination u/s 131 of the Act, the assessee stated that he bought nine tickets of the raffle and when he won the prize, he came to know about it through a vernacular newspaper, but did not intimate the same to the director of Raffles or communicate it to any other authority and that the ticket along with certain forms duly filled up were handed over to Canara Bank for collection. Further enquiries made by the Department on the statement so made by the assessee disclosed that the prize winning ticket was sold by S. Santhanraghavachari, a raffle agent, and that he had been awarded the agent's prize. When he was enquired,

it came to light that the first prize on the ticket was won by one Shankar, who was working as a cook in Kanchi Hotel, and that when he attempted to contact Shankar in the next two days, he could not do so as he was informed that he had left the hotel. Thereafter, Income Tax Officer made further enquires of the proprietor and confirmed that the first prize of the draw held in September, 1970, was won by Shankar, one of the workers in the hotel. Further enquires made by the Income Tax Officer from other persons like the flower-seller who sold a garland to Shankar revealed that Shankar belonged to Padavelu village Arni taluk and that though it was stated that he was working in the some hotel, further details were not available as he had not visited the village and none knew about his then whereabouts. The efforts made by the Income Tax Officer to trace Munuswami, the cousin of Shankar, revealed that Munuswami got sick and ultimately died. On the basis of the information so collected by the Income Tax Officer, the assessee was informed that the prize winning ticket was owned by Shankar and not by the assessee and the assessee was also further requested to state whether he would like to cross-examine any one of them and that was declined by the assessee on the ground that he did not see any useful purpose in cross-examining them. On the basis of the materials so collected, the Income Tax Officer concluded that the assessee did not purchase the prize winning ticket, but it must have been secured by him after the draw was held and the results were announced and he, therefore, added the amount of the prize as the income of the assessee from undisclosed sources. Even in the appeal before the Tribunal, copies of the depositions were made available to the assessee and even after numerous opportunities, the assessee did not place any materials to justify the deletion of the amount included and finally the Tribunal also confirmed the assessment. On initiation of proceedings for the levy of penalty, the assessee took the plea that the assessee had established that the credit represented realisation of the prize of the raffle ticket and that the Department had not discharged the onus of proving concealment. After adverting to the efforts taken by the Income Tax Officer and also the evidence collected in the course of the enquiry made by him of several persons, the Inspecting Assistant Commissioner found that the circumstantial evidence clearly established that the assessee did not

purchase the prize winning ticket, but that one Shankar, who was working as a servant in Kanchi Hotel, had purchased the same and the assessee had paid from out of the income from undisclosed sources and acquired the prize winning ticket and it was reasonable to hold that the amount of Rs. 1,00,000 represented his secret income undisclosed to the Department. The Tribunal has also considered the entire evidence and found that the evidence collected by the Income Tax Officer from totally independent persons clearly established that it was only Shankar who had won the prize and that the assessee had not been able to satisfy that purchase the prize winning raffle ticket. Considering the entire evidence as well as other available materials, the Tribunal found that the inference is irresistible that the ticket purchased by Shankar, which eventually won the prize, had been secured by the assessee and was later also encashed. The Tribunal also felt that the absence of a link to connect the purchase by the assessee of the ticket from Shankar would not, in the face of the other evidence, lead to the conclusion that the assessee purchased the ticket prior to its winning the prize. Though it was faintly contended that there was nothing to show that the assessee got the ticket from Shankar on payment of Rs. 1,00,000 we are not prepared, on the materials available in this case, to so hold, as the evidence clearly leads to the conclusion that the assessee had purchased the ticket after the prize was won by that ticket and the further inference is that no prize winning ticket should have been parted with for the amount other than the prize amount at least. It may be, as pointed out by the Tribunal, that the assessee might have been paid a larger amount taking into account the advantages that may be secured by him by adopting such a course with reference to his tax assessment. All the assessment proceedings in relation to the assessee from 1962-63 onwards as referred to in paragraph 18 of the order of the Inspecting Assistant Commissioner shows that the assessee was in a position to command substantial funds which had not been disclosed to the Department and in order to bring to account at least a part of such amounts, the assessee had purchased the prize winning ticket at least for a lakh of rupees. On a careful consideration of the facts and circumstances and also the available materials, we are of the view that the Tribunal was quite right in holding that the Department has established concealment of income by the assessee to the tune of one lakh of rupees and that penalty is also exigible. We

also find that only the minimum penalty had been levied on the assessee. We, therefore, answer the question referred to us in the affirmative and against the assessee. The Revenue will be entitled to the costs of this reference. Counsel's fee Rs. 500.