
(1986) 08 CAL CK 0034

In the Calcutta High Court

Case No : Income-tax Reference No. 374 of 1979

Tarak Nath Gupta

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 04-08-1986

Acts Referred:

Income Tax Act, 1961 — Section 271, 271(1), 274

Citation : (1986) 57 CTR 313 : (1987) 166 ITR 468 : (1986) 29 TAXMAN 486

Hon'ble Judges : Monjula Bose, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : A.K. Roy Chowdhury, for the Appellant;R.C. Prasad, for the Respondent

Judgement

Dipak Kumar Sen, J.—Tarak Nath Gupta, the assessee, was assessed to Income Tax as an individual for the assessment year 1970-71. The assessee filed his return for the said assessment year on February 24, 1971. During the assessment proceedings, the Income Tax Officer found that the assessee had not shown in the return the income arising out of a truck of which the assessee was the owner since 1946. The assessee contended and also made a statement on oath u/s 131 of the Income Tax Act, 1961, that he did not own any vehicle. But, ultimately, the assessee admitted by his letter dated December 16, 1972, that the said truck stood registered in his name and as it was difficult for him to prove that it belonged to another person and not to him, he offered to be assessed on the income from the same. The Income Tax Officer also detected that the assessee had a savings bank account with Hindustan Commercial Bank Ltd., the interest arising from which had not been shown in his return. The assessee initially disputed that he had such an account, but later the assessee admitted that the account belonged to him.

2. On the facts found as aforesaid, the Income Tax Officer initiated proceedings for penalty against the assessee by a notice dated February 23, 1973, issued u/s 274 of the Income Tax Act, 1961, read with Section 271 thereof.

3. The assessment was completed on March 16, 1973. In the total income, a sum of Rs. 6,000 and a sum of Rs. 2 were added, respectively, on account of the truck and the said savings bank account. The said additions have been sustained on appeals preferred by the assessee.

4. The date of hearing of the penalty proceeding was fixed on September 28, 1973. The assessee did not appear at the hearing. Thereafter, a reminder dated February 25, 1974, was issued to the assessee fixing the hearing of the case on March 4, 1974. The reminder was received by the assessee but he did not appear at the hearing. A further reminder was issued on June 20, 1974, fixing the hearing of the case on July 3, 1974. This time the assessee refused to accept the service of the reminder. Thereafter, a third reminder dated July 15, 1974, was given to the assessee fixing the hearing of the case on July 22, 1974. This reminder was received by the assessee on July 20, 1974. The assessee submitted an explanation in writing and asked for a further adjournment of the hearing for a fortnight.

5. The facts found are that on the application of the assessee, adjournment was granted. It is not stated or found for how long the hearing was adjourned or when the next date of hearing was fixed.

6. Thereafter, the Income Tax file of the assessee was transferred from the Income Tax Officer, Central Circle XIV, Calcutta, to the Income Tax Officer, Central Circle XVI, Calcutta. The file of the assessee was again transferred from the Income Tax Officer, Central Circle XVI, Calcutta, to the Income Tax Officer, Central Circle VI, Calcutta. Finally, the Income Tax file of the assessee was again transferred from the Income Tax Officer, Central Circle VI, Calcutta, to the Income Tax Officer, Central Circle XVIII, Calcutta.

7. The Income Tax Officer who had initially issued the notice u/s 274 read with Section 271 of the Income Tax Act, 1961, happened to be the Income Tax Officer, Central Circle XVIII, Calcutta, to whom the file of the assessee was ultimately transferred.

8. On November 20, 1974, the assessee wrote to the Income Tax Officer, Central Circle XVIII, that as his file has been transferred from the Income Tax Officer, Central Circle XIV, Calcutta, the proceedings may be reheard by the new incumbent and a reasonable opportunity should be given to the assessee to make representation in the pending proceedings. This letter was not answered. On February 17, 1975, the Income Tax Officer, Central Circle XVIII, passed an order imposing a minimum penalty of Rs. 6,002 being an amount equal to the income concealed. It was recorded in the said order that though the hearing of the penalty proceedings fixed on July 22, 1974, was adjourned at the request of the assessee, even up to date, nothing further had been heard from the assessee and it was presumed that the assessee had no explanation to offer.

9. Being aggrieved, the assessee preferred an appeal before the Appellate Assistant Commissioner against the order of penalty. It was contended before the

Appellate Assistant Commissioner that the penalty levied was illegal and invalid inasmuch as there was no material or evidence before the Income Tax Officer and he had imposed penalty on the basis of an estimated income. It was further contended that in spite of demand by the assessee for an opportunity of being heard by the assessee's letter dated November 24, 1974, no such opportunity was given to which the assessee was entitled u/s 129 of the Income Tax Act, 1961, and, as such, the order imposing penalty was improper being in contravention of the principles of natural justice. The Appellate Assistant Commissioner rejected the contentions of the assessee and confirmed the penalty.

10. There was a further appeal by the assessee before the Income Tax Appellate Tribunal. It was contended on behalf of the assessee before the Tribunal that the income which was added to the total income of the assessee in respect of the truck was estimated at Rs. 6,000 and on further appeal, the addition had been reduced to Rs. 5,000. It was contended further that the basis of the penalty being concealment of an estimated income, the penalty could not be justified. It was also contended that the order of penalty was passed without giving the assessee an opportunity of being heard in spite of his letter dated November 20, 1974, demanding a further hearing. It was contended that the return of the income had been filed on February 24, 1971, before the amendment of Sub-section (2) of Section 274 of the Income Tax Act, 1961, by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971. It was contended that as the minimum penalty imposable exceeded Rs. 1,000, the Income Tax Officer had no jurisdiction to impose such penalty which should have been imposed only by the Inspecting Assistant Commissioner. Contentions to the contrary were made on behalf of the Revenue.

11. The Tribunal found that the same person who was the Income Tax Officer, Circle VI, at the relevant time and had issued the notice initiating the penalty proceedings had also imposed the order of penalty as the Income Tax Officer, Central Circle XVIII, Calcutta, after giving the assessee an opportunity of being heard. The Tribunal found further that the quantum of penalty imposable u/s 271 of the Income Tax Act, 1961, would be governed by the law as it stood on the date of the filing of the return, but for the purpose of procedure, the law which was applicable was that prevailing on the date of the initiation of the penalty proceedings. On the date the penalty proceedings were initiated, the Income Tax Officer had jurisdiction to pass the order and impose the penalty.

12. On an application of the assessee u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following questions, as questions of law arising out of its order, for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that since the penalty was imposed by Sri S. K. Das Gupta, the Income Tax Officer, Central Circle XVIII, Calcutta, who as the Income Tax Officer, Central Circle VI, Calcutta, had given the assessee a notice of

hearing for showing cause why penalty should not be imposed, the requirement of personal hearing was met ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the procedure for the imposition of penalty would be governed by the law as it stood on the date of initiation of proceedings of penalty and, therefore, since the proceedings of penalty were initiated in 1973, the procedure would be governed by Section 274, as it stood after its amendment by the Direct Taxes (Amendment) Act, 1970, and in that view holding that the Income Tax Officer was competent to impose penalty ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in confirming the imposition of penalty u/s 271(1)(c) of the Income Tax Act, 1961 ?"

13. From the facts as found, it appears that several dates of hearing of the penalty proceeding had been fixed since September 28, 1975, but the same were not effective inasmuch as the assessee either did not attend the hearing or applied for adjournment. The last of such adjournments appears to have been granted on the application of the assessee when the hearing, which was fixed on July 22, 1974, was adjourned. It is not found that any further or other date of hearing was fixed or that the assessee was given notice of any subsequent date of hearing. It is also on record that thereafter the assessee's Income Tax file was transferred successively from one Income Tax Officer to another. Ultimately, the Income Tax Officer, Central Circle, Calcutta-XVIII, imposed the penalty on February 17, 1975. The assessee specifically applied for a rehearing by his letter dated November 28, 1974. No reply appears to have been given to this letter. In the facts and circumstances as aforesaid, it appears that after the hearing of the penalty proceedings were adjourned to July 22, 1974, at the instance of the assessee, no further opportunity has been given to the assessee.

14. u/s 274 of the Income Tax Act, 1961, as it stood both before and after the amendment effective from April 1, 1971, it was provided that no order imposing a penalty under this Chapter would be made unless the assessee has been heard or has been given a reasonable opportunity of being heard. In the facts and circumstances of the instant case, it appears to us that no reasonable opportunity was afforded to the assessee of being heard before the order of penalty was imposed. The last hearing fixed on July 22, 1974, was admittedly adjourned but thereafter it appears that the assessee was never informed as to when the hearing would take place or that no further hearing would be given to the assessee.

15. Section 274 of the Income Tax Act, 1961, as it stood before its amendment by the Taxation Laws (Amendment) Act, 1970, as follows:

"Section 274 : Procedure.-

(1) No order imposing a penalty under this Chapter shall be made unless the

assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

16. After April 1, 1971, the said section, till it was further amended in 1975 with effect from April 1, 1976, reads as follows :

"Section 274: Procedure.--(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that sub-section the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.

(3) An Appellate Assistant Commissioner, on making an order under this Chapter imposing a penalty, shall forthwith send a copy of the same to the Income Tax Officer."

17. It was argued on behalf of the assessee before us that the law applicable would be the law which was in force at the time of filing of the return and, therefore, it was the Inspecting Assistant Commissioner and not the Income Tax Officer who had jurisdiction to impose the penalty when it exceeded Rs. 1,000.

18. In support of his contention, learned advocate for the assessee cited:

(a) Continental Commercial Corporation Vs. Income Tax Officer and Another, ,

(b) CIT v. Royal Motor Car Co. [1971] 107 ITR 753, and

(c) Brij Mohan Vs. Commissioner of Income Tax , New Delhi, .

19. In Continental Commercial Corporation Vs. Income Tax Officer and Another, , on almost identical facts, the Madras High Court held that when the return was filed prior to April 1, 1971, the jurisdiction of the officer imposing the penalty was governed by Section 274, as it stood before the amendment, effective from April 1, 1971.

20. Learned advocate for the assessee also contended that no penalty was imposable in the instant case as the income was added on estimation and that

the amount of income added having been reduced by the Appellate Assistant Commissioner, the Tribunal had no jurisdiction to confirm the penalty imposed of Rs. 6,000.

21. Learned advocate for the Revenue contended to the contrary. He submitted that, in the instant case, the assessee had been afforded more than one opportunity of being heard which the assessee did not avail of. In fact, he ignored more than one reminder and refused to accept the same. He submitted further that the hearing of the penalty proceedings fixed on July 22, 1974, was adjourned at the instance of the assessee and it was for the assessee to keep track of the proceedings thereafter.

22. Learned advocate for the Revenue contended further that for the purpose of jurisdiction to impose a penalty, the law, as it stood on the day of the initiation of the penalty proceedings would be applicable and not the law as it stood at the date of the filing of the return. In support of his contentions, he cited the decision of the Kerala High Court in Commissioner of Income Tax Vs. Varkey Chacko, . Here, on identical facts, the Kerala High Court had dissented from the decision of the Madras High Court in Continental Commercial Corporation Vs. Income Tax Officer and Another, . Learned advocate for the Revenue relied on and cited subsequent decisions of other High Courts in Rattan Chand Krishan Lal Vs. Commissioner of Income Tax, and Heeralal Khushalchand Bothra Vs. Commissioner of Income Tax, , where the view taken by the Kerala High Court was followed.

23. In the facts and circumstances, on consideration of the respective submissions of the parties and for the reasons as stated above, we hold that the assessee in the instant case was not afforded a reasonable opportunity of being heard before the penalty was imposed. We answer questions Nos. 1 and 3 in the negative and in favour of the assessee. By reason of our answer to the said questions which disposes of this reference, we do not return any answer to question No. 2. We record that learned advocate for the assessee does not press for an answer to the said question.

24. The reference is disposed of accordingly. There will be no order as to costs.

Monjula Bose, J.

25. I agree.