
(1994) 03 MAD CK 0004

In the Madras High Court

Case No : T.C. No. 217 of 1981 (Reference No. 69 of 1981)

T.P.K. Ramalingam

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-03-1994

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1995) 125 CTR 99 : (1995) 211 ITR 520

Hon'ble Judges : Venkataswami, J; R. Jayasimha Babu, J

Bench : Division Bench

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

Judgement

1. The Tribunal has referred for the decision of this court the following two questions :

1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in sustaining the penalty u/s 271(1)(c) of the Income Tax

Act, 1961?

2. Whether the Tribunal is justified in sustaining the penalty in the background of the various estimates by various valuer with differing results?

2. The brief facts leading to the above reference may now be noted. For the assessment year 1971-72, the assessee filed a return disclosing an

income of Rs. 11,251 on March 6, 1972. During the year in question, the assessee had constructed four shops and he has shown the cost of

construction as per books in a sum of Rs. 15,337. The Income Tax Officer. However, was of the view that the cost of construction he has shown

in the books of account was on the low side. On that view, the Income Tax Officer directed the assessee to submit an estimate of the cost of

construction supported by a report of the approved valuer. Later on, the assessee submitted a report from the approved valuer, who has estimated

the cost of construction in a sum of Rs. 35,900. It may also be noted here that, subsequently, the assessee produced before the Income Tax

Officer another valuation report, showing the cost of construction in a sum of Rs. 21,000. In view of the difference, it appears that the Income Tax

Officer had another valuation through a valuer of the Department, who estimated the cost of construction at Rs. 24,000. The officer was of the

view that the difference between the cost of construction shown as per the books of account and the first estimated value given by the assessee

should be taken as income concealed from the department. On that view, penalty was levied u/s 271(1)(c) of the Income Tax Act, 1961, namely,

Rs. 20,563, representing the difference between the first valuation report and the actual cost of construction, as shown in the books of account.

3. Aggrieved by the levy of penalty, the assessee preferred an appeal to the Appellate Assistant commissioner, who was of the view that though

there was concealment, that concealment can be fixed by taking the difference between the cost of construction shown in the books of account and

the valuation report given by the Departmental valuer, that means Rs. 24,000 minus Rs. 15,337. He fixed the penalty in that amount. The assessee,

still aggrieved, preferred a further appeal to the Tribunal. The Tribunal, while confirming views of the authorities below that there was concealment

of income on the part of the assessee, fixed the penalty by taking the difference between the second valuation report given by the assessee in a sum

of Rs. 21,000 and the actual cost of construction shown in the books of account, namely, Rs. 15,337. Not satisfied with the relief got from the

Tribunal, the assessee was able to get the above two questions referred to this court.

4. Mr. Janarthana Raja, learned counsel appearing for the assessee, submitted that penalty u/s 271(1)(c) of the Income Tax Act normally cannot

be levied when the concealment is arrived at on the basis of the estimated value of the building and in support of that he placed heavy reliance on a

Division Bench decision of this court in Commissioner of Income Tax Vs. Apsara Talkies, . In that judgment, Balasubrahmanyam J., speaking for

the Bench, agreeing with the view taken by the Kerala High Court Bench in Commissioner of Income Tax Vs. Mohammed Kunhi, , and dealing

with more or less identical facts, held that even if the assessee's explanation for the difference between the actual cost of construction, shown in the books of account, and the valuer's report not accepted by the Department, it would still require some further material to support the finding that the assessee had concealed his taxable income. On that view of the matter, the learned judges set aside the penalty levied in that case. After referring to the question, referred to in that case, the learned judges observed as follows (at page 305) :

The question is somewhat unusually framed with a citation of case law in it. Commissioner of Income Tax Vs. Mohammed Kunhi, is a decision by the Kerala High Court. It contains a clear ruling that penalty cannot be levied on the basis merely of an estimate of the cost of construction of a building built by an assessee with his funds. In the case before that High Court, an addition was made to the income returned on the score that the cost of construction as disclosed in the assessee's books was lower than the estimated cost of the building as rendered by a valuer. The learned judges held that a mere estimate of cost cannot constitute material on which a finding of concealment can be rendered. In that case, some explanation had been offered by the assessee as to why the construction was at an economical cost. This explanation was not accepted by the Income Tax Officer. The learned Judges held that even if the assessee's explanation was not acceptable, it would still require some further material to support the finding that the assessee had concealed its taxable income. We respectfully agree with this view.

5. Contending contra, Mr. Rajan, learned counsel appearing for the Revenue, submitted that if there was a deliberate underestimate of income an inference of concealment of income can be drawn. In support of this contention, he placed reliance on another judgment of this court in

Commissioner of Income Tax Vs. Balakrishna Textiles and others, . On the proposition as such, there cannot be any quarrel. But, it must be seen

in the context in which that observation or proposition came to be made. The latter case, namely, CIT v. Balakrishna Textiles [1992] 193 ITR 361

(Mad), appears to be a case of search and seizure and the finding given by the authorities below was on the basis of search and seizure regarding

the deliberate underestimate of income. We are not concerned with such a situation in this case. After going through the judgment in the latter case,

Commissioner of Income Tax Vs. Balakrishna Textiles and others, , and the former case, Commissioner of Income Tax Vs. Apsara Talkies, , are more or less close to the facts of our case and, therefore, we are inclined to apply the ratio laid down in the former case, namely, Commissioner of Income Tax Vs. Apsara Talkies, , to the facts of the present case. Accordingly, we answer the questions referred to us in the negative and in favour of the assessee. There will be no order as to costs.