

Commissioner of Income-Tax, Madras and Another

Vs

S. V. Angidi Chettiar

Civil Appeals Nos. 6 To 8 of 1961

(CJI B. P. Sinha, J. L. Kapur, M. Hidayatullah, J. C. Shah, J. R. Mudholkar JJ)

18.01.1962

JUDGMENT

SHAH J. –

These are three appeals with certificates of fitness granted by the High Court of Madras against orders passed in petitions for the issue of writs of certiorari setting aside orders imposing penalty upon the firm of Messrs. S. V. Veerappan Chettiar & Co. passed by the Income-tax Officer under section 28 (i) (c) of the Indian Income-tax Act.

Four persons carried on business in cloth at Virudhunagar in the name and style of S. V. Veerappan Chettiar & Co. - hereinafter called the firm. The firm was registered under section 26A of the Income-tax Act, 1922, for the assessment years 1947-48, 1949-50 and 1950-51. The firm concealed particulars of its income in submitting its returns, and the Income-tax Officer, Virudhunagar, in the course of assessment proceedings directed, by order dated May 20, 1954, payment of penalty of Rs. 20,000 for the year 1947-48, Rs. 10,000 for the year 1949-50 and Rs. 5,000 for the year 1950-51. Against the orders imposing penalty, one of the partners of the firm moved the Commissioner of Income-tax, Madras, in revision but without success. Thereafter, petitions under article 226 of the Constitution for issue of writs of certiorari or other appropriate writs calling for records relating to the orders dated May 20, 1954, passed by the Income-tax Officer, Virudhunagar, in respect of the three assessment orders and the record

This Court in a recent judgment - Abraham v. Income-tax Officer, Kottayam - held that the Income-tax Officer had power under section 28 of the Income-tax Act to impose penalty in the course of assessment of a firm even if the firm stood at the date of the order dissolved by the death of one of its partners. In so holding, this court observed that section 44 of the Income-tax Act sets up machinery for assessing tax liability of a firm which has discontinued its business and that the expression "assessment" in the different section of Chapter IV of the Income-tax Act was not used merely in the sense of computation of income, and when section 44 declared that the partners or members of the firm shall be jointly and severally liable to assessment, it referred to the liability to computation of income under section 23 as well as the application of the procedure for declaration and imposition of tax liability and the machinery for enforcement thereof.

Counsel for the respondents, however, contended that Abraham's case was one of an unregistered firm and the principle of that case has no application where the firm is a registered firm But section 44 makes the provisions of Chapter IV, so far as may be, applicable to assessment when any business, profession or vocation carried on by a firm has been discontinued; the section declares liability of all discontinued firms and not merely of unregistered firms. There is nothing in section

44 or the context in which it occurs to indicate that it does not apply to registered firms. This court in Abraham's case approved the decision of the Andhra Pradesh High Court in Mareddy Krishna Reddy v. Income-tax Officer, Tenali which was a case of a registered firm, which was dissolved before imposition of penalty.

Counsel then argued that, in any event, no penalty under section 28 can be imposed against a registered firm either before or after dissolution, even if the defaults set out in clauses (a), (b) or (c) are proved. This, counsel submits, is the result of the scheme of the Act under section 23 (5) for assessment of tax liability of a registered firm. This plea was not set up in the petition, and there is no reference to it in the judgment of the High Court and even in the statement of the case filed in this court there is no trace of it. On that ground alone the plea raised by the appellant is liable to be rejected. Even if the appellate is permitted to raise the contention there is, in our judgments, no force in it. Section 28 (i) of the Act (in so far as it is material to these appeals) provides :

"If the Income-tax Officer... in the course of any proceeding under this Act is satisfied that any person -

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34 or has reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

(b) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 23, or

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

he or it may direct that such persons shall be way of penalty, in the case referred to in clause (a), in addition to the amount of the income -tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super- tax, if any, which would have been avoided if the if the income as returned by such person had been accepted as the correct income."

The expression "person" is defined in section 2 (a) of the Act as including "a Hindu undivided family and a local authority". That evidently is not an exhaustive definition and recourse is permissible to the General Clauses Act which says in section 3 (42) that a "person" includes "any company or association or nobody of individuals whether incorporated or not". A firm is manifestly a body of individuals and would therefore fall within the definition of "person", and may be exposed to an order for payment of penalty in the circumstances set out in clauses (a), (b) and (c) of section 28 of the Income-tax Act. That a firm, registered or unregistered, may be liable to pay penalty has been further clarified by proviso (d) which declares the quantum of penalty payable by firms, registered as well as unregistered. Counsel for the respondent however contends that even if a firm be regarded as a person within the meaning of the operative part of section 28 and the proviso thereof, because of an obvious defect in draft

Section 28, as it was originally enacted, was somewhat obscure. The penalty which could be imposed in case referred to in clauses (b) and (c) was to be a sum not exceeding one and a half times the amount of the tax which would have been avoided if the income as returned by such person had been accepted as the correct income. But the Legislature did not give any indication whether the penalty was related to the tax avoided by the partners of the firm, or by the firm on the footing that it was to be regarded as an unregistered firm. By section 23 (5), income-tax not being made payable by the firm but by the individual partners of a registered firm the legislative intention was not clearly expressed. The Legislature to rectify the defect fixed an artificial basis for computing the penalty payable by a registered firm : it provided that in the cases referred to in clauses (b) and (c), the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the corre

The Calcutta High Court in *Khusiram Murarilal v. Commissioner of Income-tax* was called upon to deal with the submission made before us in this case. In that case the question which fell to be determined was whether imposition of a penalty on a registered firm under section 28 (1) (b) of the Income-tax Act was justified in law. It was urged in that case on behalf of the assessee - a registered firm - that inasmuch as under section 28 (1) (b) a persons can be made liable to pay penalty, in addition to the amount of income-tax and super-tax, if any, payable by him in cases falling under clauses (b) and (c), no order for payment of penalty can be made against a registered firm, because under the Income-tax Act no tax is made payable by the firm. Chief Justice Chakravarti, speaking for the court, observed : "...event when construed by its own language the concluding paragraph of section 28 (1) cannot be said to make it a condition precedent that a person must be liable to pay some income-tax or it may be also

In our view the learned Chief Justice was right in so enunciating the law. Under section 23 (5) of the Indian Income-tax Act, before it was amended in 1956, in the case of a registered firm the tax payable by the first itself was not required to be determined but the total income of each partner of the first including therein the share of its income, profits and gains of the previous year was required to be assessed and the sum payable by him on the basis of such assessment was to be determined. But this was merely a method of collection of tax due from the firm.

The penalty provisions under section 28 would therefore in the event of the default contemplated by clause (a), (b) or (c) be applicable in the course of assessment of a registered firm. If a registered firm is exposed to liability of paying penalty, by committing any of the defaults contemplated by clause (a), (b) or (c) by virtue of section 44, notwithstanding the dissolution of the firm the assessment proceedings are liable to be continued against the registered firm, as if it has not been dissolved.

Counsel contended that in any event, penalty for the assessment year 1949-50 could not be imposed upon the assessee firm because there was no evidence that the Income-tax Officer was satisfied in the court of any assessment proceedings under the Income-tax Act that the firm had concealed the particulars of its income or had deliberately furnished inaccurate particulars of the income. The power to impose penalty under section 28 depends upon the satisfaction of the Income-tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in clauses (a), (b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income-tax Officer before the completion of the assessment proceedings by the Income-tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the ex

In our view, the High Court was in error in holding that penalty could not be imposed under section 28 (1) (c) upon the firm Messrs. S. V. Veerappan Chettiar & Co. after its dissolution.

The appeals will therefore be allowed and the orders passed by the High Court will be set aside and the petitions filed by the respondents dismissed with costs in this court and the High Court. One hearing fee.

Appeals allowed.

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