

The Commissioner of Income-Tax, West Bengal

Vs

Anwar Ali

Civil Appeal No. 2560 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

29.04.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Calcutta High Court answering the following question which was referred to it by the Tribunal in the negative and in favour of the assessee :

"Whether, on the facts and in the circumstances of the case, the income-tax authorities were justified in imposing a penalty on the assessee under Section 28(1)(c) of the Income-tax Act ?"

The assessee during the assessment year 1947-48, the corresponding previous year being the financial year ending on March 31, 1947 was a partner in the firm of M/s. Haji Sk. Md. Hussain Md. Jan of Calcutta. The Income-tax Officer while making the assessment discovered an undisclosed bank account of the assessee with the Central Bank of India Ltd. at Bettiah, Bihar. It was found that a cash deposit of Rs. 87,000/- had been made by the assessee on November 21, 1946, in that Bank. He was asked to explain the source of the amount of deposit. According to his explanation all his relations got panicky during the communal riots in Bihar in the year 1946 and entrusted him with whatever cash amounts they had with them at that time for safe custody. It was stated that a sum of Rs. 87,000/- had been received in the following manner :

#Zahir Hussain alias Md. Zahir (Cousin) .. Rs. 18,500/-Mohammed Jan (deceased father) .. Rs. 1,000/-Mohd. Haniff (cousin) .. Rs. 1,750/-Khairunnessa Bibi (mother) .. Rs. 23,000/-Safihan Bibi (Sister) .. Rs. 13,000/-Fatema Bibi (Wife) .. Rs. 15,750/-Hasuia Bibi (Brother's wife) .. Rs. 12,000/- ----- Rs. 87,000/-##

These amounts which were received by the assessee from his relations were deposited by him in a fixed deposit account in the joint names of himself and his minor sons in the Bank at Bettiah. The Income-tax Officer did not accept the explanation of the assessee and held that the sum of Rs. 87,000/- represented income from undisclosed sources. He added the amount to the total income of the assessee in his personal assessment. This addition was maintained by the Appellate Assistant Commissioner in appeal. The Appellate Tribunal also agreed with the decision of the Income-tax Officer and the Appellate Assistant Commissioner.

2. Penalty proceedings were initiated after the assessment and in due course the Income-tax Officer imposed a penalty amounting to Rs. 66,000/- on the assessee under Section 28(1)(c) for concealing

income and deliberately furnishing inaccurate particulars. The Appellate Assistant Commissioner in appeal held that the case clearly called for a penal action but he reduced the amount of penalty by Rs. 22,000/-. Subsequently he rectified his order under Section 35 and confirmed the penalty of Rs. 66,000/- imposed by the Income-tax Officer. The assessee went up to the Appellate Tribunal in appeal. The Tribunal took the view that penalty proceedings were of a criminal nature. The onus lay on the department to show by adequate evidence that the amount of the cash stated to have been concealed by the assessee was of a revenue nature and was assessable as income and that the assessee had concealed it or deliberately furnished false particulars in regard thereto. This onus, in the opinion of the Tribunal, was not discharged by the income-tax authorities by showing merely that the explanation given by the assessee in the assessment proceedings was found to be unacceptable. The Income-tax Officer, according to the Tribunal, must find some material apart from the falsity of the assessee's explanation to support his finding that the receipt from undisclosed sources was income. As no satisfactory evidence had been produced by the department to establish that the amount in question represented the income of the assessee the Tribunal held that no penalty could be imposed.

3. Now penalty can be imposed under Section 28(1)(c) if the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under the Income-tax Act, 1922 is satisfied that any person "has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income." In the judgment under appeal reference has been made to the decisions of the various High Courts on the true ambit and scope of this provision and the burden in the matter of establishing concealment of particulars of income or deliberately furnishing inaccurate particulars of such income. The majority of the High Courts, namely, Bombay in *Commissioner of Income-tax, Ahmedabad v. Gokuldas Harivallabhdas*, (34 ITR 98), Gujarat in *Commissioner of Income-tax, Gujarat v. L. H. Vora* (56 ITR 126) and Patna in *Commissioner of Tax, Bihar and Orissa v. Mohan Mallah* (54 ITR 499) had expressed the view that proceedings under Section 28(1)(c) were of a penal nature and it was for the department to establish that the assessee was guilty of concealment of the particulars of income. The mere fact that the assessee had given a false explanation did not prove that the receipt necessarily constituted income of the assessee. Allahabad High Court, however, in *Mohan Ram Ram Kumar v. Commissioner of Income-tax, U. P.* (59 ITR 135) observed that where the explanation offered by the assessee in respect of an item of income shown as capital receipt was deliberately false it was open to the Income-tax authorities to impose a penalty under Section 28(1)(c). In the earlier judgment in *Lal Chand Gopal Das v. Commissioner of Income-tax, U. P.* (48 ITR 324), the Allahabad High Court had said that if a receipt was income but was disguised in the account or in the return as a non-assessable receipt it was clearly a case of concealment of the particulars or of furnishing inaccurate particulars of income and a penalty under Section 28(1)(c) should be imposed on the assessee.

4. The first point which falls for determination is whether the imposition of penalty is in the nature of a penal provision. The determination of the question of burden of proof will depend largely on the penalty proceedings being penal in nature or being merely meant for imposition of an additional tax, the liability to pay such tax having been designated as penalty under Section 28. One line of argument which has prevailed particularly with the Allahabad High Court in *Lal Chand Gopal Das's* case (supra) is that there was no essential difference between tax and penalty because the liability for payment of both was imposed as a part of the machinery of assessment and the penalty was merely an additional tax imposed in certain circumstances on account of the assessee's conduct. The justification of this view was founded on certain observations in *C. A. Abraham v. Income-tax Officer, Kottayam and Another* (41 ITR 425). It is true that penalty proceedings under Section 28 are included in the expression "assessment" and the true nature of penalty has been held to be

additional tax. But one of the principal objects in enacting Section 28 is to provide a deterrent against recurrence of default on the part of the assessee. The section is penal in the sense that its consequences are intended to be an effective deterrent which will put a stop to practices which the Legislature considers to be against the public interest. It is significant that in *C. A. Abraham's case* (supra) this court was not called upon to determine whether penalty proceedings were penal or of quasi-penal nature and the observations made with regard to penalty being an additional tax were made in a different context and for a different purpose. It appears to have been taken as settled by now in the sales-tax law that an order imposing penalty is the result of quasi-criminal proceedings : (*Hindustan Steel Ltd. v. The State of Orissa* (C. As. 883-892 of 1996 dated 4-8-1969)). In England also it has never been doubted that such proceedings are penal in character : *Fattorini (Thomas) (Lancashire) Ltd. v. Inland Revenue Commissioner* (1943 (11) ITR (Supp) 50).

5. The next question is that when proceedings under Section 28 are penal in character what would be the nature of the burden upon the department for establishing that the assessee is liable to payment of penalty. As has been rightly observed by Chagla C.J., in *Commissioner of Income-tax Ahmedabad v. Gokuldas Harivallabhdas* (34 ITR 98) the gist of the offence under Section 28(1)(C) is that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income and therefore the department must establish that the receipt of the amount in dispute constitutes income of the assessee. If there is no evidence on the record except the explanation given by the assessee which explanation has been found to be false it does not follow that the receipt constitutes his taxable income.

6. Another point is whether a finding given in the assessment proceedings that a particular receipt is income after rejecting the explanation given by the assessee as false would prima facie be sufficient for establishing in proceedings under Section 28 that the disputed amount was the assessee's income. It must be remembered that the proceedings under Section 28 are of a penal nature and the burden is on the department to prove that a particular amount is a revenue receipt. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false does not necessarily give rise to the inference that the disputed amount represents income. It cannot be said that the finding given in the assessment proceedings for determining or computing the tax is conclusive. However, it is good evidence. Before penalty can be imposed the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

7. In the present case, it was neither suggested before the High Court nor has it been contended before us that apart from the falsity of the explanation given by the assessee there was cogent material or evidence from which it could be inferred that the assessee had concealed the particulars of his income or had deliberately furnished inaccurate particulars in respect of the same and that the disputed amount was a revenue receipt. The question was, therefore, rightly answered by the High Court.

8. The appeal fails and it is dismissed with costs.

</html