Chuharmal S/O Takarmal Mohnani

Vs

Commissioner of Income Tax, M. P., Bhopal

Special Leave Petition (Civil) No. 1863 of 1986

(Sabyasachi Mukharji, S. Ranganathan JJ)

02.05.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This petition for leave to appeal is directed against the judgment and order dated December 10, 1985 of the High Court of Madhya Pradesh, Jabalpur Bench. The High Court upheld the imposition of penalty as well as the addition of alleged concealed income in the income tax assessment of the petitioner. The relevant assessment year with which we are concerned in this application is 1974-75.

2. It appears that the petitioner had submitted his return of income for the assessment year 1974-75 showing a total income of Rs. 3113 in response to a notice issued under Section 143(2) of the Act of the Income Tax Act, 1961 (hereinafter called 'the Act'). According to the petitioner, he had derived his income from 2 stores, i.e., M/s. Mohanani Fancy General Stores, and M/s. Roopkala General stores, Durg. It, however, appears that on January 19, 1974 on the basis of the order passed by the Superintendent, Central Excise, Jagpur, dated December 25, 1975 there was confiscation of foreign watches from the house of the petitioner and levy of penalty of Rs. 2 lakhs under the Customs Act, 1962. Accordingly, the Income Tax Officer issued a notice calling upon the assessee to show cause why the value of the watches seized from his residence should not be treated as his income from undisclosed sources. In this connection it may be relevant to note that on May 12, 1973 a search was make of the petitioner's bedroom from where a total of 565 wrist-watches of foreign make valued at Rs. 87,455 were seized from a suitcase and in a secret cavity of a locked steel almirah and also behind the almirah there were watches folded in a bundle of waste papers. A panchnama was prepared at the same time mentioning these facts. According to the customs authorities, the petitioner found himself unable to make any statement at that time on account of which recording of statements was deferred. However, it is stated, the petitioner went out of station on May 14, 1973. The petitioner's statement was recorded on May 13, 1973 as soon as he was available. In his statement Annexure R-III duly signed by him, he has admitted these facts and merely denied knowledge of the manner in which those watches came to be in his house.

3. It appears from the record of the customs case, with which we will have to deal later in S. L. P. No. 1008/86 [See (1988) 3 SCC 257], the petitioner was given a show cause notice as to why the period of six months fixed under Section 110(2) of the Customs Act, 1962 should not be extended but no reply was given by the petitioner till November 10, 1973 or even thereafter. Hence, by an order dated November 10, 1973 before the expiry of six months, time was extended by the Collector of Customs for a further period of 6 months, for giving a notice as required under Section 124(a) of the Customs Act, 1962. Under the proviso to sub-section (2) of Section 110 of the Customs Act, 1962, a show cause notice specifying the requisite particulars, was given to the petitioner on May 4,

1974. In the reply the petitioner made a general denial. The enquiry was fixed on October 30, 1975 for giving a personal hearing to the petitioner, when the petitioner's counsel and sought for an adjournment to November 20, 1975, which was granted. However, on November 20, 1975 the counsel of the petitioner stated that the petitioner did not want to avail of the opportunity of personal hearing or even to cross-examine the witnesses in whose presence the panchnama was made at the time of the seizure of the watches. It is necessary to bear these facts in mind because it has repercussions to the notice dated January 19, 1974, as mentioned hereinbefore issued by the Income Tax Officer to show cause why the aforesaid sum of Rs. 90,768 should not be treated as the petitioner's concealed income. The Income Tax Officer further directed issuance of the notice under Section 271(1)(c) of the Act.

4. Being aggrieved by the said order the petitioner preferred an appeal before the Appellate Assistant Commissioner against the order dated February 20, 1976. The Appellate Assistant Commissioner dismissed the appeal and held that in view of the order passed by the Collector of Customs, the Income Tax Officer was justified in including the cost of the watches in the income of the assessee for the assessment year 1974-75. Thereafter, on March 29, 1978 the Assistant Commissioner of the Income Tax issued notice of penalty under Section 271(1)(c) of the Act, imposing penalty of Rs. 90,000 minimum imposable being Rs. 87,455 and maximum imposable being Rs. 1,74,910. Being aggrieved thereby the petitioner filed two appeals before the Income Tax Appellate Tribunal. The Tribunal by its order dated August 19, 1980 dismissed these appeals. The petitioner has further stated that in the meanwhile the State of Madhya Pradesh initiated criminal proceedings under Section 125 read with Section 111 of the Customs Act, 1962 and the learned Chief Judicial Magistrate, Durg, by his order convicted the petitioner and awarded one year's rigorous imprisonment. Therefore, on November 2, 1982 the petitioner filed an appeal in the Court of Additional Judge in the Court of Sessions, who by his judgment allowed the appeal and acquitted the petitioner of the said criminal charge.

5. Thereafter, there was a reference to the High Court on two questions against the order of the Income Tax Appellate Tribunal under Section 256(1) of the Act. The questions are as follows :

> (i) Whether, on the facts and in the circumstances of the case, was the Tribunal justified in holding that the assessee was the owner of the watches and thus including the value thereof in the assessment of the assesses ?
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> (ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the department had discharged its burden for establishing the concealment of income by the assessee for the year under consideration and thus confirming the penalty of Rs. 90,000 levied by the Inspecting Assistant Commissioner of Income Tax ?

6. The High Court in its order noted that the raiding party by virtue of the search entered not the bedroom of the assessee on May 12, 1973 and seized the watches. A panchnama was prepared. The department found that the assessee was the owner. Section 110 of the Evidence Act is material in this respect and the High Court relied on the same which stipulates that when the question is whether any person is owner of anything of which he is shown to be in possession, the onus of proving that he is not the owner, is on the person who affirms that he is not the owner. In other words, it follows from well settled principle of law that normally, unless contrary is established, title always follows possession. In the facts of this case, indubitably, possession of the wrist-watches was found with the petitioner. The petitioner did not adduce any evidence, far less discharged the onus

of proving that the wrist-watches in question did not belong to the petitioner. Hence, the High Court held, and in our opinion rightly, that the value of the wrist-watches is the income of the assessee. In this connection reference may be made to the views expressed by Justice Tulzapurkar as his Lordships then was, of the Bombay High Court in the case of J. S. Parkar, v. V. B. Palekar, [(1974) 94 ITR 616 (Bom HC)], where on difference of opinion between Justice Deshpande and Justice Mukhi, Justice Tulzapurkar, agreed with Justice Deshpande and held the question whether on the evidence established, the petitioner was the owner of the gold seized, though there was no direct evidence placed before the taxing authorities to prove that the petitioner had actually invested moneys for purchasing the gold in question, the inference of the ownership of the gold in the petitioner in that case rested upon circumstantial evidence. There also gold was seized from a motor launch belonging to the petitioner in that case. There a contention was raised that the provision in Section 110 of the Evidence Act where a person was found in possession of anything, the onus of proving that he was not the owner was on the person who affirmed that he was not the owner, was incorrect and inapplicable to taxation proceedings. This contention was rejected. The High Court of Bombay held that what was meant by saying that the Evidence Act did not apply to the proceedings under the Act was that the rigour of the rules of evidence contained in the Evidence Act, was not applicable but that did to mean that the taxing authorities were desirous in invoking the principles of the Act in proceedings before them, they were prevented from doing so. Secondly, all that Section 110 of the Evidence Act does is that it embodies salutary principle of common law jurisprudence which could be attracted to a set of circumstances that satisfy its condition.

7. We are of the opinion that this a correct approach and following this principle the High Court in the instant case was right in holding that the value of the wrist-watches represented the concealed income of the assessee.

8. Section 68-A of the Act was inserted in the Finance Act, 1964 and it came in force w.e.f. January 1, 1964. The High Court has rightly held that the expression 'income' as used in Section 69-A of the Act, has wide meaning which meant anything which came in or resulted in gain. Hence, in the facts of this case a legitimate inference could be drawn that the assessee had income which he had invested in purchasing the wrist-watches and, as such, that income was subject to tax. In the view the High Court was justified in justifying the Tribunal's holding that the assessee was the owner of the wrist-watches and thus including the value in the assessment of the income of the assessee as his wealth and so deemed to be the income of the assessee by virtue of Section 69-A of the Act coupled with surrounding circumstances. Therefore, inclusion of the money in purchasing the wrist-watches, that is to say, Rs. 87,455 was correct and proper for the assessment year under reference. In this connection Section 69-A of the Act may usefully be set out as follows :

> Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

9. So far as the first question is concerned, the High Court answered accordingly and in our opinion rightly.

10. As regards the second question, Section 271(1)(c) of the Act was inserted in the Finance Act, 1974 which reads as follows :

> Explanation. - Where the total income returned by any person is less than 80 per cent of the total income (hereinafter in this Explanation referred to as the correct income) as assessed under Section 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished, inaccurate particulars of such income for the purposes of clause (c) of this sub-section.

11. From the facts found by he revenue, the assessee had shown only a total income of Rs. 3113 and subsequently the raiding party seized wrist-watches worth Rs. 87,445. Thus the value of that income was included in the assessable income of the assessee. Therefore, the total assessable income of the assessee came to Rs. 90,568 whereas the returned income was Rs. 3113 Explanation was certainly less than 80 per cent of the total income and, as such, Explanation applied. Accordingly, the revenue has discharged the onus of proving concealment of income. This view was expressed by a Full Bench of Punjab & Haryana High Court in Vishwakarma Industries v. CIT [(1982) 135 ITR 652 (P & H)(FB), where all the relevant authorities have been discussed.

12. In that view of the matter and in view of the principles behind the purpose of Explanation, the assessee in the instant case, has failed to discharge his onus of proof. The aforesaid Explanation was amended by Finance Act, 1964 with effect from April 1, 1964. The amendment was prospective in effect and in the year under reference the amendment was in force. Though the penalty proceedings are penal in nature but in the facts of this case the onus on revenue has been duly discharged. This was also the view of the Bench decision of the Madhya Pradesh High Court in CIT v. Bherulal Shrikishan [(1983) 28 MPLJ 162].

13. The second question referred to hereinbefore was, therefore, answered in favour of the revenue by the High Court and in our opinion the High Court was justified in so doing.

14. In the aforesaid view of the matter, there is no merit in this application for leave to appeal and it is accordingly dismissed.

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