

Gujarat Travancore Agency

Vs

Commissioner of Income-Tax, Kerala.

Civil Appeals Nos. 630 and 631 of 1975

(CJI R. S. Pathak, M. H. Kania JJ)

02.05.1989

JUDGMENT

R. S. PATHAK C.J.I. –

1. These appeals, by certificate granted by the high Court of Kerala, are directed against the judgment of that High Court answering the following question of law referred to it in an income-tax reference in favour of the Revenue and against the assessee:

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in cancelling the penalties levied under section 271(1)(a) of the Income-tax Act, 1961, for the assessment years 1965-66 and 1966-67 ?"

The assessee is a registered firm trading in hill produce. The assessee did not file its income-tax return under the Income-tax Act, 1961, for the assessment year 1965-66 within the statutory period, that is to say, by June 30, 1965, and instead applied for time to file the return. Time was granted up to August 31, 1966. Yet no return was filed. It was only after a notice under section 139(2) of the Act was served on the assessee on September 22, 1967, that it filed a return on the next day. Similarly, for the assessment year 1966-67, no return was filed up to June 30, 1966. No application for extension of time was made either. When a notice under section 139(2) was served on the assessee on June 21, 1966, it filed a return on September 23, 1967. In the circumstances, the Income-tax Officer initiated penalty proceedings against the assessee under section 271(1)(a) of the Act for the two assessment years. A sum of Rs. 14,784 was levied as penalty for the assessment year 1965-66 and a sum of Rs. 11,447 was imposed as penalty for the assessment year 1966-67. The explanation of the assessee that he was under the bona fide belief that he had no assessable income and had, therefore, not filed the returns earlier was not accepted by the Income-tax Officer. In appeal before the Appellate Assistant Commissioner of Income-tax, the assessee did not press the ground that there was no deliberate omission on his part to file the returns and that, therefore, section 271(1)(a) of the Act was not attracted. In second appeal before the Income-tax Appellate Tribunal, permission was granted to the assessee to raise the ground. The Appellate Tribunal allowed the appeals holding that the Income-tax Officer had failed to bring on record any material to show that the explanation of the assessee tendered before him in regard to the delay should not be accepted, and that as the element of mens eras was required to be proved but had not been proved, the penalties were liable to be cancelled.

At the instance of the Revenue, the Appellate Tribunal referred the question set forth earlier to the High Court of Kerala. It may be mentioned that another question was also referred, which related to the Appellate Tribunal entertaining the additional ground of appeal, but the appeals before us are not

concerned with that question. The question with which we are concerned was referred to a Full Bench of the High Court, and the High court has taken the view that mens rea need not be established before penalty is imposed under section 271(1)(a) of the Act, and that, therefore, the Appellate Tribunal was not justified in cancelling the penalties levied for the two assessment years.

Learned counsel for the assessee has addressed exhaustive arguments before us on the question whether penalty imposed under section 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does, he has placed before us several cases decided by this court and the High Courts in order to demonstrate that the proceedings by way of penalty under section 271(1)(a) of the Act are quasi-criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed under section 271(1)(a). We are relieved of the necessity of refereeing to all those decisions. Indeed, many of them were considered by the high Court and are referred to in the judgment under appeal. It is sufficient for us to refer to section 271(1)(a), which provides that penalty may be imposed if the Income-tax Officer is satisfied that any person has, without reasonable cause, failed to furnish the return of total income, and to section 276C which provides that if a person wilfully fails to furnish in due time the return of income required under section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of section 276C, which speaks of willful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent sentence must be imposed to discourage the repetition of the offence. In the case of a proceeding under section 271(1)(a), however, it seems that intention of the Legislature is to emphasize the fact of loss or revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection, the terms in which the penalty falls to be measured are significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in *Corpus Juris Secundum*, Volume 85, page 580, paragraph 1023:

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income-tax Officer under section 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 1966-67.

In the result the appeals fail and are dismissed with costs.

Appeals dismissed.

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