

Commissioner of Income Tax

Vs

Kalyan Das Rastogi

Civil Appeal Nos. 240-248(Nt) of 1978

(N. M. Kasliwal, K. Ramaswamy JJ)

01.02.1991

ORDER

1. This appeal is directed against the order of the High Court of Judicature at Allahabad dated April 9, 1977. The Income Tax Appellant Tribunal 'B' (Bench Allahabad) by its order dated October 18, 1975 held that in the facts and circumstances of the case, it cannot be said that the assessee could not have been under a bona fide belief that its income was below the taxable limit and it was under no obligation to file a return of its income voluntarily. In taking the aforesaid view, the Tribunal held that penalty proceedings being criminal or quasi-criminal establishment of mens rea is an essential ingredient and as such the statutory obligation is on the Revenue to prove that the assessee has acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of his obligation.

2. In a recent decision of this Court in Gujarat Travancore Agency v. CIT [(1989) 3 SCC 52 : 1989 SCC (Tax) 389 : (1989) 177 ITR 455] this Court has held as under : (SCC pp. 54-55, paras 4 and 5)

"Learned counsel for the assessee has addressed an exhaustive argument 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 referring 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 a 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 276-C 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 276-C, which speaks of wilful 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 the intention of the legislature is to emphasise the fact of loss of 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 is significant. Unless there is something in the language of the statute indicating the need to establish the element of means 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."

3. In view of the above statement of law already made by this Court, we are of the view that a question of law arises out of the order of the Tribunal dated October 18, 1975. The High Court was wrong in taking the view that no question of law arose out of the order of the Tribunal.

4. In the result, we allow the appeals, set aside the order of the High Court dated April 9, 1977 and direct the Income Tax Appellant Tribunal 'B' (Bench Allahabad) to state the case and refer the following question of law for the decision of the High Court :

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in cancelling the penalty orders and deleting the penalty of (amounts not being mentioned) levied under Section 271(1)(a) for the assessment years 1965-66 to 1973-74 ?"

5. In the facts and circumstances of the case, there will be no order as to costs.

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