Commissioner of Income Tax (Addl.), Gujarat

Vs

M/s. I. M. Patel and Co.

Civil Appeal Nos. 2626-28 of 1979

(S. Mohan, G. N. Ray JJ)

28.04.1992

JUDGMENT

S. MOHAN, J. –

1. All the three appeals can be dealt with under the common judgment since the assessment years are different while the assessee - the respondent is one and the same. The three assessment years in question are 1964-65, 1965-66 and 1966-67.

2. For the year 1964-65, the assessee returned an income of Rs 48,000 while he was assessed on an income of Rs 58,557 imposing a penalty of Rs 9,690. For the year 1965-66, the assessee returned an income of Rs 45,000. He was assessed on an income of Rs 52,337 together with the penalty of Rs 6,115. For the year 1966-67, he returned an income of Rs 51,000 while he was assessed on an income of Rs 62,560 and a penalty of Rs 3,915 was imposed. It requires to be stated, at this stage, that for the respective assessment years the returns, as per the statute, ought to have been filed on July 31, 1964, July 31, 1965 and July 31, 1966 respectively. However, the assessee filed the returns for all these years on March 24, 1967. It was the filing of these belated returns which obliged the assessing authority to impose penalty as warranted under Section 271(1)(a) of the Income Tax Act, 1961, (hereinafter referred to as "the Act"). When the assessee questioned the correctness of the imposition of penalty by way of an appeal against the order of the Income Tax Officer, the Appellate Assistant Commissioner confirmed the same. Thereupon, the matter was taken up to the Tribunal. The Tribunal deciding in favour of the assessee referred the following question of law :

> "Whether in the facts and circumstances, the Tribunal is justified in law in cancelling the penalty levied on the assessee under Section 271(1)(a) for the three assessment years 1964-65 to 1966-67 ?"

3. Originally, the matter came up before a Division Bench of the Gujarat High Court. However, the matter was referred to the Full Bench because the Division Bench found itself unable to agree with the view taken by the earlier Division Bench ruling in Morvi Cotton Merchants' Industrial Corpn. Ltd. v. State of Gujarat [(1975) 36 STC 347 (Guj)] and in Special Civil Application No. 1059 of 1972 decided by the same Bench on July 18, 1974. In these cases, the Division Bench took the view under the provisions of Section 271(1)(a) of Income Tax Act, 1961. Under the Sales Tax Act, where also the words "without reasonable cause" have been set out in the section providing for penalty, the burden is on the Revenue to prove absence of "reasonable cause".

4. Thus, the Division Bench felt since these decisions, though related to sales tax, had a direct bearing on an interpretation of Section 271(1)(a) of the Act the reference comes to be made.

5. The Full Bench of the Gujarat High Court, after referring to the case-law, ultimately disagreed with the view expressed by the Full Bench of the Kerala High Court reported in CIT v. Gujarat Travancore Agency [(1976) 103 ITR 149 : 1975 TLR 922 (Ker) (FB)] and concluded as under : (107 ITR at p. 235)

"In the light of the above discussion, our conclusions are as follows :

> (1) Under Section 271(1)(a) of the Income Tax Act, 1961, failure without reasonable cause to furnish return in question is an ingredient of the offence;
>
> (2) Section 271(1)(a) provides for penalty in cases where the assessee has either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of his obligation;
>
> (3) The legal burden is on the department to establish by leading some evidence that prima facie the assessee has without reasonable cause failed to furnish the return within the time specified in Section 271(1)(a) read with the relevant other sections referred to in that section. Once this initial burden which may be slight has been discharged by the department, it is for the assessee to show as in a civil case on balance of probabilities that he had reasonable cause in failing to file the return within the time specified;
>
> (4) Mere falsity of the explanation furnished by the assessee cannot help the department in establishing its case against the assessee at the time of imposition of penalty.

In view of the above discussion and in view of our conclusion, we answer the question as reframed by us follows :

> 'Reasonable cause is an ingredient of the offence for which the penalty is provided and the taxing authority has prima facie to prove absence of reasonable cause in the sense that has been explained above.'
>
> The matter will now go before the Division Bench for disposing of the case in accordance with law."

6. Thereafter, the matter came before the Division Bench which held that the view expressed by the Tribunal that the assessee had shown "reasonable cause" is erroneous on the facts and in the circumstances of the case. Accordingly, the reference was answered in the affirmative and against the Revenue. It is under these circumstances, the civil appeals have been preferred by the Revenue.

7. Mr. J. Ramamurthy, learned counsel appearing for the Revenue would submit that the decision of the Kerala High Court in CIT v. Gujarat Travancore Agency [(1976) 103 ITR 149 : 1975 TLR 922 (Ker) (FB)] which has been differed from the impugned judgment, which is now reported as CIT v. I. M. Patel and Co. [(1977) 107 ITR 214 (Guj) (FB)] has come to be affirmed by this Court in Gujarat Travancore Agency v. CIT [(1989) 3 SCC 52 : 1989 SCC (Tax) 389 : 1989 SCC (Cri) 509 : 177 ITR 455]. Further, the same principle, as laid down in the above ruling of the Supreme Court, has been reiterated in CIT v. Kalyan Dass Rastogi [(1992) 193 ITR 713 (SC)].

8. Based on this decision, the argument of learned counsel proceeds that there is a fundamental

distinction between the levy of penalty under Section 271(1)(a) as opposed to Section 271(1)(c) of the Act. The former relates to the obligation of the assessee to file a return within the due date, while the latter deals with concealment where statutory obligation has been imposed requiring the assessee to file the return within the due date. It is for him to show, should he file a belated return, a "reasonable cause". The burden is ultimately on the assessee to plead and prove the "reasonable cause". Consequently, no 'mens rea' could arise at all. In contradistinction to this where, it is a case of concealment of income under Section 271(1)(c) then the question of mens rea may come in. Unfortunately, in the judgment under appeal this distinction has not been in mind which led to the non-application of the ratio of the Full Bench of the Kerala High Court CIT v. Gujarat Travancore Agency [(1976) 103 ITR 149 : 1975 TLR 922 (Ker) (FB)]. It was this aspect of the matter which came to be clarified in CIT v. Gujarat Travancore Agency [(1976) 103 ITR 149 : 1975 TLR 922 (Ker) (FB)] which has subsequently been applied in CIT v. Kalyan Dass Rastogi [(1992) 193 ITR 713 (SC)]. Thus, it is submitted that the Revenue is entitled to succeed.

9. In opposition to this, the learned counsel for the assessee drew our attention to the passages occurring in the impugned judgment, wherein the requirement of proving mens rea had come to be insisted upon. According to him there is not much of a difference between a case falling under Section 271(1)(a) or sub-section (1)(c).

10. We have given our careful consideration to the above submissions. We are of the view that the Revenue is entitled to succeed. As a matter of fact the very question with which we are concerned is no longer res integra as has rightly been pointed out by Mr. Ramamurthy. In Gujarat Travancore Agency case [(1989) 3 SCC 52 : 1989 SCC (Tax) 389 : 1989 SCC (Cri) 509 : 177 ITR 455] the Court answered the question in the following words : (SCC pp. 54-55, para 4)

> "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 third Court and High Court 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 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 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 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 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."

11. In view of this, it is no longer open to argument whether any mens rea is required to be established under Section 271(1)(a). As a matter of fact, the subsequent decision of this Court in CIT v. Kalyan Dass Rastogi [(1992) 193 ITR 713 (SC)] squarely applied this ratio. In the result, the reference is answered in favour of the Revenue. The appeals will stand allowed setting aside the judgments of the High Court and the Tribunal. The order of assessment as passed by the assessing authority and as confirmed by the Assistant Appellate Commissioner in relation to penalty is hereby confirmed. There shall be no order as to costs.

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