

Jaswant Rai and Another

Vs

Central Board of Direct Taxes and Revenue and Others

Civil Appeals Nos. 435-441 of 1982

(Sujata V. Manohar, S. Rajendra Babu JJ)

04.05.1998

JUDGMENT

S. RAJENDRA BABU, J. –

1. The appellants before us preferred a writ petition under Article 226 of the Constitution of India before the High Court of Delhi seeking for a direction to extend the benefit of waiver of penalty arising under Section 271(4-A) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Pursuant to a scheme, the second appellant, the firm, made an application on 12-2-1965 stating that they would place before the Income Tax Officer a true statement of their financial assets, transactions and they were prepared to file a statement of the affairs as on 31-3-1965. The statement of affairs filed on 20-5-1965 disclosed an income of about Rs. 28,00,000 as the total accretion to its wealth over the eight years up to 31-3-1965. Ultimately after some negotiations between the department officials and the appellants, the appellants agreed to be assessed at Rs. 66,56,000 subject to the usual allowance for depreciation etc. spread over eight assessment years 1958-59 to 1965-66. Assessments for the year 1958-59 to 1959-60 were to be reopened inasmuch as they were complete by that time. The Inspecting Assistant Commissioner issued notices to the appellants to initiate proceedings under Section 271(l) (c) of the Act for the non-disclosure of the income relating to the aforesaid period. A penalty in a sum of Rs. 4,90,365 was imposed on the appellants for the years 1958-59 to 1964-65. Appeal preferred against the said order to the Income Tax Appellate Tribunal met with failure.

2. During the pendency of the penalty proceedings an application was filed under Section 271(4-A) of the Act and the Commissioner of Income Tax sent a report on the said application on 23-3-1968 setting forth the circumstances to reduce the penalty against the appellants in terms of provisions of Section 271(4-A) of the Act. The Commissioner noticed that the said provision has envisaged disclosure of income made (i) voluntarily; (ii) in good faith; (iii) such disclosure being full and true; and (iv) is made prior to the detection by the ITO of the concealment in question and held that these circumstances to attract waiver or reduction under Section 271(4-A) stood satisfied. He referred to various items such as hundi loans and the amounts surrendered, accretion to wealth between different dates. However a communication was sent by the Secretary of the Central Board of Direct Taxes on 28-3-1968 refusing to reduce the penalty. Again another letter was sent on 18-4-1969 by the Commissioner pursuant to a letter received by him on 14-4-1969 making a further report on the matter. He set out the various details thereto as to how the matter had been dealt with by the various authorities and the manner in which the appellants would be entitled to the benefit under the provisions referred to earlier. The Central Board of Direct Taxes has to approve any action of the Commissioner to waive or reduce penalty in cases when the same is above Rs. 50,000. Hence in this case reference was made by the Commissioner of Income Tax to the Board for approval of his

action to reduce the penalty but the Board refused to reduce the penalty as suggested by the former.

3. Writ petition was preferred before the High Court. In the High Court, two contentions were put forth : firstly, that the imposition of the penalty on the appellants was premature inasmuch as the application of the appellants filed under Section 271(4-A) of the Act for waiver of the penalty was still pending disposal; secondly, that the condition precedent for the satisfaction of the Income Tax Officer that the assessee had concealed his income had not been satisfied in view of the voluntary disclosure made. The High Court found no substance in either of the contentions and dismissed the writ petition. The High Court took the view that the levy of penalty under Section 271(1) (c) of the Act was not in any way dependent on the provisions of Section 271(4-A) of the Act and the question of reduction would arise only when the penalty is imposed. Therefore, it was of the view that the imposition of penalty was not premature. The High Court was also of the view that the penalty could be imposed under Section 271(1) (c) of the Act when an assessee has concealed particulars of income or furnished inaccurate particulars of such income. The assessee in the present case had concealed the income, but later on disclosed the same in the statements of returns which had been filed prior to the introduction of the voluntary disclosure scheme and that circumstance would not make any difference so far as levy of penalty is concerned and dismissed the writ petition. Hence, these appeals by special leave.

4. Shri Dipankar P. Gupta, learned Senior Counsel, submitted that Section 271(1) of the Act enables the assessing officer to impose penalty in three different sets of circumstances and in the present case, we are concerned with the exercise of power under clause (c) thereof which states that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. Provisions of Section 271(4-A) enables the Commissioner in his discretion to reduce or waive the amount of minimum penalty imposable under the provisions in cases falling under clause (c) of sub-section (1) also. Therefore, he submitted that merely because a case of an assessee attracted penalty under Section 271(1) (c) of the Act would not take away the discretion of the Commissioner if certain conditions are satisfied to which the Commissioner had already adverted to in the report made by him to the Board in seeking the previous approval for waiver or reduction of the penalty. The Board in the present case had not considered the matter in the manner required under law. He submitted that the Board had indicated that the proposal for reducing or waiving the penalty was not approved as in the facts and circumstances of the case Section 271(4-A) of the Act was not applicable. He submitted that it is not clear from the communication sent by the Board to the Commissioner as to how Section 271(4-A) of the Act was not attracted to the facts of the case.

5. It will be necessary to explain the background in which the penalty under Section 271(1) (c) vis-a-vis Section 271(4-A) of the Act was levied and those circumstances are ascertainable from the order made by the Income Tax Appellate Tribunal to which we may advert to in some detail. It was contended that the Tribunal could take into consideration Section 271(4-A) of the Act in determining the penalty arising under Section 271(1) (c) of the Act. The Tribunal noticed that in view of the fact that such a power could be exercised only by the Commissioner and not by the Tribunal and the order made by the Commissioner thereto being final, they could not examine the said contention. A contention was raised before the Tribunal as to whether a penalty as provided under Section 271(1)(c) of the Act was attracted at all or not on the basis that in the circumstances of the case there was no deliberate concealment of income or furnished any inaccurate particulars of its income and, therefore, the Department had not discharged its burden. The Tribunal proceeded to hold that the Inspecting Assistant Commissioner had based his findings of concealment on the sole consideration that the assessee had itself returned and assessed the higher figures of income than those admitted in its returns originally. The Tribunal noticed that the argument addressed by the

learned counsel for the appellants that in such a case there was no concealment of income was very plausible, but in the circumstances of the case the concealment or furnishing of inaccurate particulars by the assessee had been established. The Tribunal also noticed that the evidence led and the conclusions arrived at in the course of assessment proceedings are not conclusive of the penalty proceedings. Later on, it may come to light that an item of income had been assessed wrongly or that the assessee is able to furnish additional or new material which may change the factual position of the case. After noticing the returns filed by the assessee and setting out a table as to the assessment years, the date of filing of the return and the income returned stated that the picture that emerges was that the assessee had on the whole incurred a loss of about Rs. 10 lakhs, that is the capital with which he had started on 1-4-1957. The assessee on 12-2-1965 filed declaration as to the correct position which may be seen from the statement of financial affairs as on 31-3-1965. This declaration had been made by the assessee before the provisions of the Finance Bill, 1965 regarding voluntary disclosure scheme were introduced and it was also true that the assessee acted voluntarily in coming forward with this declaration and that in the return for its cooperative attitude the assessee expected to be let off lightly in regard to the penalty proceedings and also in regard to payment of tax. The voluntary nature of the declaration was all the more sincere and was beyond doubt since the statement of affairs sent by the assessee with its letter dated 20-5-1965 represented really the income earned by the assessee during the aforesaid period. It was also noticed by the Tribunal that there was a confession made by the assessee voluntarily and earnestly that it had not returned the full income earned by it in those years and had come forward with a disclosure of its escaped income. The disclosure might not have revealed the full extent of the assessee's concealment as the assessee was also disclosing its activities over a period of time and expecting that the escaped income would be distributed over a period of ten years and would be avoiding penal actions and possibilities of investigations and searches with a further expectation of some concession in regard to the payment of tax. The Tribunal concluded that after scrutinising the circumstances in which the disclosure was made, it is impossible to believe that at that stage the assessee had any motives to disclose what was not its income really and hence penalty under Section 271(1) (c) of the Act was attracted. If we bear this aspect in mind, we cannot say that the appellant had not disclosed its income at all before scrutiny by the assessing officer.

6. A reading of the provisions of Section 271(4-A) [after deletion of the said provisions by Taxation Laws (Amendment) Act, 1975 with effect from 1-10-1975 such power is now conferred upon the Commissioner under Section 273-A of the Act] will indicate that it is a power coupled with a duty to do justice and the Commissioner is under statutory obligation to exercise the power in favour of an assessee which has fulfilled all the conditions of the provisions. In deciding such a matter, therefore, he cannot take into account factors or reasons which are invalid or extraneous to the said provisions. The principal condition for grant of relief under the said provision is that the assessee should have voluntarily and in good faith made full disclosure of his income prior to the detection of the same and such disclosure could be made even otherwise than in the course of a return by submitting a petition to the Commissioner. In the present case, we have already noticed that the assessee had made the disclosure prior to the coming into force of the voluntary disclosure scheme and long before the Department could initiate any action in respect of the concealed income. The levy of penalty under Section 271(1) (c) by itself will not be a circumstance to take him out of the purview of Section 271(4-A) of the Act.

7. However, the learned counsel for the Department submitted that in the present case the records disclose that the concealed income had not been disclosed voluntarily or in good faith prior to the initiation of the proceedings by the Department. If this contention is examined with reference to the findings recorded by the Tribunal to which we have made detailed reference, it becomes clear that

the same cannot be accepted without further scrutiny of the matter. Whether such scrutiny had been made by the Board in this case is not clear from the endorsement issued to the Commissioner of Income Tax. The Commissioner of Income Tax has explained each one of the circumstances arising in the case whether there has been concealment by the assessee and its disclosure, the extent to which they were voluntary or the same had been made prior to the detection of the same by the Department. Therefore, it does not appear that the Board had duly applied its mind or made an order revealing its mind by making a speaking order.

8. In the circumstances, we have no hesitation to quash the order made by the Board and direct the Board to restore the proceedings to its file and examine the matter once again in the light of what we have stated above. In the result, the order made by the High Court which is under appeal before us shall stand modified in terms stated above. The appeals are allowed. No costs.