BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Gokuldas Harivallabhdas

(M Chagla, C.J. S Desai, J.)

14.03.1958

JUDGMENT

M.C. Chagla, C.J.

1. It is difficult to understand why the Tribunal has made this reference. It appears that the assessee was assessed to tax on an income of Rs. 15,203/- which the Department held to be income from undisclosed sources. A partnership was being carried on between two brothers Chimanlal and Manilal. Manilal died in the S.Y. 2000. In the relevant account year S.Y. 2003 which corresponds to the assessment year 1948-49, the assessee firm was constituted by two partners, Chimanlal and Rasiklal, the son of Manilal. Upto S.Y. 2002, the firm carried on business at Nadiad only. On the 25th of October, 1946 which was the first day of the account year S.Y. 2003, the assessee opened a branch in Bombay, and the following credits appeared in the books of account of the Bombay Branch:

Rasiklal Manilal Rs. 7,601/-

Jaswantlal Chimanlal Rs. 2,534/-

Jayantilal Chimanlal Rs. 2,534/-

Sunderlal Chimanlal Rs. 2,534/-

the last three being the sons of Chimanlal. This entry was found by the Income-tax Officer, and when the assessee was called to explain this entry, his explanation was that his brother Chimanlal had sold ornaments of his first wife and had kept with him the sale proceeds. After his brother died, his widow continued to remain in the house but she left after about two years and after she had left, the amount was divided half and half between the branch of Manilal and Chimanlal's branch. Now, the Income-tax Officer found this explanation to be false, and thereupon proceeded to assessee this amount as income from undisclosed sources. The Income-tax Officer also instituted proceedings against he assessee under Section 28(1)(c), and the result of these

proceedings was that the imposed a penalty of Rs. 4,000/-. Against this, an appeal was preferred to the Appellate Assistant Commissioner, and the Appellate Assistant Commissioner confirmed the order, and from the decision of the A.A.C. an appeal was preferred to the Tribunal. Two members of the Tribunal took the view that the penalty could not be imposed upon the assessee and thereupon this reference has been made by the Tribunal.

2. Now, the question which we are asked to answer is whether the assessee has committed an offence as described in Section 28(1)(c) in regard to its income of the previous year S.Y. 2003 relevant for the assessment year 1948-49? Now, on the face of it, the question appears to be a question of fact Whether the assessee as committed an offence or not, it is for the Tribunal to decide, and the majority of the Tribunal having decided that he has not committed an offence, the matter is concluded. We are not a further court of appeal to sit in judgment on the decision of the Tribunal. It is, therefore, possible to dispose of this reference on the narrow ground that no question of law arises from the order of the Tribunal, and the question as framed is a question of fact and not a question of law. But, as the matter is of some importance and has been argued at some length, we will reframe the question so as to bring out the real controversy in regard to law between the Department and the assessee, and the question that we will reframe will be as follows:

> "Whether there was evidence to justify the finding of the Tribunal that the assessee had not committed an offence as described in Section 28(1)(c) in regard to its income of the previous year S.Y. 2003 relevant for the assessment year 1948-49?"

3. Now, the view taken by the dissenting member of the Tribunal and which view is also pressed upon us by Mr. Joshi is that inasmuch as the explanation given by the assessee is found to be false, that fact in itself is sufficient to entitle the Income-tax Officer to come to the conclusion that the assessee has committed the offence which calls for this penalty. Now, it is true that in the assessment proceedings, it is open to the Department to take the view that if a certain receipt appears in the books of account of the assessee, and the assessee is not in a position to give an explanation in regard to that receipt, that receipt constitutes an income from undisclosed sources. But the question that we have to consider is whether it is open to the Department to come to a similar conclusion when proceedings are taken under Section 28(1)(c). The proceedings under Section 28(1)(c) in their very nature are penal proceedings, and the elementary principles of criminal jurisprudence must apply to these proceedings, and nothing is more elementary at lest in this country in criminal jurisprudence than the principle that the burden of proving that the accused is guilty is always upon the prosecution, and Mr. Joshi seems to suggest, though not quite definitely, because he cannot do so, but impliedly that the principle somehow gets altered when we come to the revenue law. Now, the assessee is not charged with having given a false explanation. This is not the gist of the offence under Section 28(1)(c). The gist of the offence

under Section 28(1)(c) is that the assessee concealed the particulars of his income or deliberately furnished inaccurate particulars of such income. Therefore the Department must establish that the receipt of Rs. 15,203/- constitutes "income" of the assessee. There is not an iota of evidence on the record except the explanation given by the assessee, which explanation has been found to be false. Now, it does not follow that because the particular explanation given by the assessee is false, therefore necessarily the receipt of Rs. 15,203/- constitutes a taxable income of the assessee. There may be hundred and one other possibilities as to how this receipt came into the books of account of the assessee. Take one instance, which immediately strikes one's mind. The assessee may have gone to the race course and earned this sum of Rs. 15,203/- by means of a very fortunate and successful betting. He may wish to concerned that fact and he may have given a false explanation as to how he came by this sum of Rs. 15,203/-. Therefore it becomes obvious that when you eliminate the explanation of the assessee, which it is open to the Department to do, something must be left which will lead to the inference that the receipt of rs. 15,203/- constitutes an income. Now, if you wipe off from the slate this evidence, nothing whatever remains, and as we have just said, the very basis of the decision against the assessee is that the explanation he gave was a false one. As a matter of fact, the member of the Tribunal, who took the view in favour of the Department, puts it in this way:

> "Where, however, the explanation given is so improbable that it amounts to being false the, I believe, the assessee exposes himself to the penalty leviable under Section 28(1)(c)".

With respect to this member, he seems to overlook the fact, as we have already suggested, that the assessee is not being prosecuted for giving a false explanation. The charge against him is that he gave inaccurate particulars about his income, and it is not possible to infer from the falseness of the assessee's explanation that the receipt necessarily constitutes an income of the assessee. it is hardly necessary to emphasise that the assessee is not called upon to prove his innocence; it is for the Department to establish his suits. If there was any evidence on which the Income-tax Officer had relied then undoubtedly it was for him to be satisfied under the evidence, the majority of the Tribunal was perfectly right in coming to the conclusion that the charge against the assessee was not brought home to the assessee.

4. There is one other aspect of the matter, which is also of considerable importance. The President of the Tribunal, when the matter was referred to him, with two members having differed, also took the view that the income in respect of which the penalty proceedings were launched, was not earned in the assessment year and therefore, these penalty proceedings could not have been taken. Now, Mr. Joshi says that once an assessment has been made with regard to this income, the assessment became final and conclusive, as no appeal was preferred against it, and it was not open to the President to take the view that the income was not earned in the

assessment year. In effect, what is suggested by Mr. Joshi is that the finding of the Income-tax Officer in the assessment proceedings that this particular receipt constituted an income for the assessment year 1948-49 was a finding which was binding upon the Income-tax Officer in the penalty proceedings and ultimately upon the court of appeal from that decision. In our opinion, that contention is untenable. It has often been said that each proceeding under the Income-tax Act is a self-contained proceeding and the findings in one proceedings do not become binding in respect of other proceedings. Now, it is difficult to understand why this well-known principle should be departed from in penalty proceedings. If anything, if the principle is not well established so far as the assessment proceedings are concerned, then it should be established so far as penalty proceedings also are concerned. The assessment proceedings are taxing proceedings; the penalty proceedings are criminal proceedings in their very nature, and a decision given in an assessment proceeding cannot possibly be binding upon the authority who tries the assessee for an offence.

5. If any authority was required for this proposition, it is to be found in a judgment of the Allahabad High Court in Dwarka Prasad v. Commissioner of Income-tax, (A). What the Allahabad High Court held was that although the findings in the assessment proceedings may constitute a material on which the Income-tax Officer may act, in any penalty proceedings they do not constitute res judicata. Therefore, it is perfectly open to the Income-tax Officer in the penalty proceedings to consider his own finding that this receipt constituted an income for the assessment year, but he is not bound by that finding. If for instance, any other evidence was produced in the penalty proceedings, it would be open to him to come to a different conclusion. If it was open to the Income-tax Officer to come to a different conclusion, clearly equally it was open to the Tribunal to come to a different conclusion on this point.

6. The result is that the assessee must succeed and we must answer the question, as we have reframed, in the affirmative.

7. Commissioner to pay the costs.

8. Answer accordingly.