

PETITIONER:
COMMISSIONER OF INCOME TAX WEST BENGAL

Vs.

RESPONDENT:
ANWAR ALI

DATE OF JUDGMENT:
29/04/1970

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
HEGDE, K.S.

CITATION:
1970 AIR 1782 1971 SCR (1) 446
1970 SCC (2) 185
CITATOR INFO :
F 1972 SC 132 (18)
D 1973 SC 22 (13)
RF 1977 SC2194 (2)
RF 1980 SC1146 (7)
RF 1992 SC 591 (2)

ACT:
Income-tax Act (11 of 1922), s. 28-Penalty proceedings-
Whether of a criminal nature-Onus on department show amount
concealed as income.

HEADNOTE:

The Income-tax Officer, while assessing the respondent to tax discovered an undisclosed bank account of the respondent for a large sum. He did not accept the explanation of the respondent as to the source of the amount and held that it represented income from an undisclosed source. Thereafter he initiated penalty proceedings under s. 28 and imposed a penalty which was confirmed by the Appellate Assistant Commissioner. In appeal, the Tribunal held that penalty proceedings were of a criminal nature and that the burden lay on the department to show that the amount concealed was of a revenue nature and was assessable as income and that the onus was not discharged in the present case by merely showing that the assessee's explanation was not accepted in the assessment proceedings. The High Court agreed with the Tribunal.

In appeal to this Court,
HELD. (1) Penalty proceedings are included in the expression "assessment" and the true nature of a penalty is the imposition of an additional tax. But, one of the principal objects of s. 28 is to provide a deterrent against recurrence of default on the part of the assessee. Therefore, the section is a penal provision and the proceedings were of a penal nature. [450 B-C]

C. A. Abraham v. Income-tax officer, 41 I.T.R. 425 (S.C.), explained. Commissioner of Income-tax, Ahmedabad v. Gokuldas Harivallabhdas

34 I.T.R. 98, Commissioner of Income-tax Gujarat v. L. H. Vora, 56 I.T.R. 126 and Commissioner of Income Tax Bihar and

Orissa v. Mohan Mallah, 54 I.T.R. 499, approved.
Moman Rain Ram Kumar v. Commissioner of Income-tax, U.P., 59 I.T.R. 135 and Lal Chand Gopal Das v. Commissioner of Income-tax, U.P., 48 I.T.R. 324, not approved.
Hindustan Steel Ltd. v. State of Orissa, C.As. Nos. 883-892/66 dt. 4-8-1969 and Fattorini (Thomas) (Lanchashire) Ltd. v. Inland Revenue Commissioner, (1943) (11) I.T.R. Supp. 50, referred to.

(2) The gist of the offence under s. 28(1)(c) is that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, and therefore, the department must establish that the receipt of the amount in dispute constitutes income of the assessee. If there is no evidence on the record except the explanation has been found to be false, it does not follow that the receipt constitutes his taxable income. [450 E-G]

447)

Commissioner of, Income-tax, Ahmedabad v. Gokuldas Harivallabhdas, 34 I.T.R. 98, approved.

(3) 'Since the proceedings under s. 28 are of a penal nature and the burden is on the department to prove that a particular amount is a revenue receipt, the finding given in the assessment proceedings that the assessee's explanation is false and that the disputed amount represents income is evidence but is not conclusive. Before penalty could be imposed the, entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee, had consciously, concealed the particulars of his income or had deliberately furnished inaccurate particulars. [450-451 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2560 of 1966. Appeal from the judgment and order dated May 11, 1966 of the Calcutta High Court in Income-tax Matter No. 98 of 1962.

S. T. Desai, G. C. Sharma and R. N. Sachthey, for the appellants.

D. K. De, A. N. Sinha, Rathin Das for P. K. Mukherjee, for respondent.

The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judgment of the Calcutta High Court answering the following question which was referred to it by the Tribunal in the negative and in favour of the assessee.

"Whether on the facts and in the circumstances of the case, the Income-tax authorities were justified in imposing a penalty on the assessee under Section, 28 (1) (c) of the Income-tax Act ?"

The assessee during the assessment year 1947-48, the corresponding- previous year being the financial year ending on March 31, 1947 was a partner in the firm of M/s. Haji Sk. Md. Hussain Md. Jan of Calcutta. The Income-tax Officer while making the assessment discovered an undisclosed bank account of the assessee with the Central Bank of India Ltd. Bettiah, Bihar. It was found that a cash-deposit of Rs. 87,000 had been made by the assessee on November 21, 1946 in that Bank. He was asked to explain the source, of the amount of deposit. According to his explanation all his relations got panicky during the communal riots in Bihar in the year 1946 and entrusted him with whatever cash amounts they had with them at that time for safe custody.

448

It was stated that a sum of Rs. 87,000 had been received in the following manner

Zahir Hussain alias Md. Zahir (Cousin)	Rs. 18,500/-
Mohammad Jan (deceased father)	Rs. 1,000
Mohd. Haniff (cousin)	Rs. 1,750
Khairunnessa Bibi (mother)	Rs. 23,000
Safiha Bibi (Sister)	Rs. 13,000
Fatema Bibi (Wife)	Rs. 15,750
Hasuia Bibi (Brother's wife)	Rs. 12,000

Rs. 87,000

These amounts which were received by the assessee from his relations were deposited by him in a fixed deposit account in the joint name of himself and his minor sons in the Bank at Bettiah. The Income-tax Officer did not accept the explanation of the assessee and held that the sum of Rs. 87,000 represented income from undisclosed sources. He added the amount to the total income of the assessee in his personal assessment. This addition was maintained by the Appellate Assistant Commissioner in appeal. The Appellate Tribunal also agreed with the decision of the Income-tax Officer and the Appellate Assistant Commissioner.

Penalty proceedings were initiated after the assessment and in due course the Income-tax Officer imposed a penalty amounting to Rs. 66,000 on the assessee under S. 28 (1) (c) for concealing income and deliberately furnishing inaccurate particulars. The Appellate Assistant Commissioner in appeal held that the case clearly called for a penal action but he reduced the amount of penalty by Rs. 22,000. Subsequently he rectified his order under S. 35 and confirmed the penalty of Rs. 66,000 imposed by the Income-tax Officer. The assessee went up to the Appellate Tribunal in appeal. The Tribunal took the view that penalty proceedings were of a criminal nature. The onus lay on the department to show by adequate evidence that the amount of the cash stated to have been concealed by the assessee was of a revenue nature and was assessable as income and that the assessee had concealed it or deliberately furnished false particulars in regard thereto. This onus, in the opinion of the Tribunal, was not discharged by the Income-tax authorities by showing merely that the explanation given by the assessee in the assessment proceedings was found to be unacceptable. The Income-tax Officer, according to the Tribunal, must find some material apart from the falsity of the assessee's explanation to support his finding that the receipt from undisclosed sources was income. As no satisfactory evidence had been produced by the department to establish

4 49

that the amount in question represented the income of the assessee the Tribunal held that no penalty could be imposed. Now penalty can be imposed under s. 28 (1) (c) if the Income tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under the Income-tax Act 1922 is satisfied that any person "has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income". In the judgment under appeal reference has been made to the decisions of the various High Courts on the true ambit and scope of this provision and the burden in the matter of establishing concealment of particulars of income or deliberately furnishing inaccurate particulars of such income. The majority of High Courts, namely, Bombay in Commissioner of Income-tax, Ahmedabad v. Gokuldas

Harivallabhdas(1), Gujarat in Commissioner of Income-tax Gujarat v. L. H. Vora (2) and Patna in Commissioner of Income-tax Bihar & Orissa v. Mohan Mallah(3) had expressed the view that proceedings under s. 28 (1) (c) were of a penal nature and it was for the department to establish that the assessee was guilty of concealment of, the particulars of income. The mere fact that the assessee had given a false explanation did not prove that the receipt necessarily constituted income of the assessee. Allahabad High Court, however, in Moman Rain Rant Kumar(1) v. Commissioner of Income-tax U.P. observed that where the explanation offered by the assessee in respect of an item of income- shown as capital receipt was deliberately false it was open to the Income-tax authorities to impose a penalty under s. 28 (1) (c). In the earlier judgment in Lal Chand Gopal Das v. Commissioner of Income-tax U.P.(5) the Allahabad court had said that if a receipt was income but was disguised in the account or in the return as a non-assessable receipt it was clearly a case of concealment of the particulars or of furnishing inaccurate particulars of income and a penalty under s. 28 (1) (c) should be imposed on the assessee.

The first point which falls for determination is whether the imposition of penalty is in the nature of a penal provision. The determination of the question of burden of proof will depend largely on the penalty proceedings being penal in nature or being merely meant for imposition of an additional tax,, the liability to pay such tax having been designated as penalty under s. 28. One line of argument which has prevailed particularly with the Allahabad High Court in Lal Chand Gopal Das(5) case is that there was no essential difference between tax and penalty because the liability for payment of both was imposed as a part of the-

(1) 34 I.T.R. 98.

(2) 56 I.T.R.

126.

(3) 54 I.T.R. 499.

(4) 59 J.T.

P. 135.

(5) 48 I.T.R. 324.,

450

-machinery of assessment and the penalty was merely an additional tax imposed in certain circumstances on account of the assessee's conduct. The justification of this view was founded on certain observations in C. A. Abraham v. Income-tax Officer, Kottayam & Anr.(1). It is true that penalty proceedings under s. 28 are included in the expression "assessment" and the true nature of penalty has been held to be additional tax. But one of the principal objects in enacting S. 28 is to provide a deterrent against recurrence of default on the part of the assessee. The section is penal in the sense that its consequences are intended to be an effective deterrent which will put a stop to practices which the legislature considers to be against the public interest. It is significant that in C. A. Abraham's(1) case this Court was not called upon to determine whether penalty proceedings were penal or of quasi penal nature and the observations made with regard to penalty being an additional tax were made in a different context and for a different purpose. It appears to have been taken as settled by now in the sales tax law that an order imposing penalty is the result of a quasi criminal proceedings; (Hindustan Steel Ltd. v. The State of Orissa(1). In England also it has never been doubted that such proceedings are penal; Fattorini (Thomas) (Lanchashire) (Ltd., v. Inland Revenue Commissioner (3).

The next question is that when proceedings under S. 28 are penal in character what would be the nature of the burden

upon the department for establishing that the assessee is liable to payment of penalty. As has been rightly observed by Chagla C.J., in Commissioner of Income-tax, Ahmedabad v, Gokuldas Harivallabhdas (4) the gist of the offence under S. 28 (1) (c) is that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income and therefore the department must establish that the receipt of the amount in dispute, constitutes income of the assessee. If there is no evidence on the record except the explanation given by the assessee which, explanation has been found to be false it does not follow that the receipt constitutes his taxable income.

Another point is whether a finding given in the assessment proceedings that a particular receipt is income after rejecting the explanation given by the assessee as false would prima facie be sufficient for establishing in proceedings under S. 28 that the disputed amount was the assessee's income. It must be remembered that the proceedings under S. 28 are of a penal nature and the burden is on the department to prove that a particular amount

(1) 41 I. T.R. 425.

(3) 1943 (11) I.T.R. (Supp.)50.

(2) C.A.S. 883-392/66 dt. 4-8-1969.

(4) 34 I.T.R. 98.

451

is a revenue receipt. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false does not necessarily give rise to the inference that the disputed amount represents income. It cannot be said that the finding given in the assessment proceedings for determining or computing the tax is conclusive. However it is good evidence. Before penalty can be imposed the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

In the present case, it was neither suggested before the High Court nor has it been contended before us that apart from the falsity of the explanation given by the assessee there was cogent material or evidence from which it could be inferred that the assessee had concealed the particulars of his income or had deliberately furnished inaccurate particulars in respect of the same and that the disputed amount was a revenue receipt. The question was, therefore, rightly answered by the High Court.

The appeal fails and it is dismissed with costs.

V.P.S.

dismissed.

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Appeal