

Karnataka High Court Commissioner Of Income-Tax vs M.M. Gujamgadi on 8 February, 2005 Equivalent citations: 2007 290 ITR 168 KAR, 2007 290 ITR 168 Karn Author: H N Das Bench: H Dattu, H N Das JUDGMENT H.N. Nagamohan Das, J. 1. The Income-tax Appellate Tribunal, at the instance of the Revenue, has referred the following question of law for our opinion: Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the Department could not establish the charge of concealment of income in respect of the unexplained cash credits in the books of the assessee and in that view in cancelling the penalty levied under Section 271(1)(c)? 2. For the assessment year 1993-94, the assessee filed a return of income on December 23, 1993, declaring an income of Rs. 97,920. This return of income was taken up for scrutiny assessment. The Income-tax Officer found from the books of account of the assessee a sum of Rs. 2,01,000 and a notice was issued to the assessee to explain the same. The assessee submitted his reply stating that he has borrowed the sum of Rs. 2,01,000 from different creditors. Since the assessee failed to secure the creditors, he voluntarily offered to treat the same as cash credit. On the basis of the submission of the assessee, the Income-tax Officer passed an assessment order on August 3, 1994, computing the total income of the assessee at Rs. 2,99,500. 3. Subsequently, the Income-tax Officer issued a show-cause notice under Section 271(1)(c) of the Income-tax Act, 1961 ("the Act" for short), as to why penalty should not be imposed for the alleged concealment of income by the assessee. The assessee submitted his explanation stating that he voluntarily offered addition of income of Rs. 2,01,000 because of the reason that he failed to produce the evidence of the borrowers. The Income-tax Officer, rejecting the explanation offered by the assessee, passed an order of penalty vide order dated September 8, 1995. The assessee, being aggrieved by the order of penalty, filed an appeal before the Commissioner of Income-tax (Appeals) and the same came to be rejected on July 12, 1995, by confirming the order of penalty passed by the Income-tax Officer. The assessee, being aggrieved by the order of penalty and also the rejection of his appeal by the Commissioner of Income-tax (Appeals), filed an appeal before the Income-tax Appellate Tribunal in I. T. A. No. 858 of 1995. The Tribunal, vide order dated March 12, 1996, allowed the appeal and set aside the order of penalty passed by the Income-tax Officer and the order in appeal passed by the Commissioner of Income-tax (Appeals). The Revenue, being aggrieved by this order of the Tribunal, requested the Tribunal to refer the question of law as hereunder for the opinion of this court: Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the unexplained cash credits in the books of account do not amount to concealment of income? 4. The Tribunal has redrafted the question of law and referred it to this court as stated supra. 5. Sri M.V. Seshachala, learned Counsel for the Revenue contends that the only explanation offered by the assessee to the show-cause notice issued under Section 271(1)(c) of the Act was that the assessee has voluntarily offered the amount for addition to his income. This voluntary offer by the assessee for addition to his income was pursuant to the detection by the Income-tax Officer from the books of account of the assessee that a sum of Rs. 2,01,000 is not declared. In view of Explanation 1(B) to

Section 271(1)(c) of the Act there is concealment of income by the assessee and therefore it attracts penalty. The Tribunal is not justified in holding that the penalty is not at all leviable in the facts and circumstances of this case. 6. Per contra, Sri Parthasarathy, learned Counsel for the assessee contends that the assessee explained the non-disclosure of income of Rs. 2,01,000 on the ground that the same is borrowed from different creditors and despite his best efforts, he could not produce the creditors before the Income-tax Officer to substantiate his explanation and therefore, having no other alternative, the assessee agreed voluntarily to offer an income of Rs. 2,01,000 as an addition in his return of income. Therefore, the assessee's explanation is bona fide explanation. The assessing authority failed to give a specific finding in the order of penalty that the explanation offered by the assessee is not bona fide explanation and in the absence of such finding, the order of penalty is vitiated. He justifies the order passed by the Tribunal. 7. Heard the arguments on both sides. Perused the entire reference papers. 8. Section 271 of the Act specifies imposition of penalty for failure to furnish returns, comply with the notices, concealment of income, etc. Section 271(1)(c) of the Act authorises the assessing authority or the Commissioner of Income-tax (Appeals) to levy penalty in case of concealment of particulars of income or for furnishing inaccurate particulars of income. Explanation 1 appended to Section 271(1)(c) of the Act specifies as to when the assessee fails to offer an explanation or the explanation so offered is found to be false or the explanation is not proved and when the explanation is not bona fide to treat the same as deemed concealment of income. Explanation 1(B) to Section 271(1)(c) of the Act is relevant for the purpose of this case and the same reads as hereunder: (B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him. 9. A reading of Sections 271 and 271(1)(c) and the Explanation appended thereto manifestly makes it clear that every addition of income by the Income-tax Officer will not automatically attract levy of penalty. It is clear from Explanation 1(B) to Section 271(1)(c) of the Act that while computing the total income of an assessee, if the assessee fails to prove that such explanation is bona fide then there will be a deemed concealment by the assessee. In the instant case, in response to the notice issued by the Income-tax Officer for addition of Rs. 2,01,000, the assessee replied that he borrowed the same from different creditors who are all agriculturists. When the assessee was asked to substantiate this claim, the assessee made attempts to secure those creditors to examine before the Income-tax Officer. Despite the best efforts of the assessee, he could not secure the creditors as witnesses to substantiate his claim before the Income-tax Officer. Having no other alternative, the assessee voluntarily agreed for addition of Rs. 2,01,000 to his income as cash credit. Accordingly, the Income-tax Officer computed the total income of the assessee at Rs. 2,99,500, vide order of assessment dated August 3, 1994, and on that the assessee has paid the taxes. Under these circumstances it cannot be said that the explanation of the assessee for non-inclusion of an income of Rs. 2,01,000 in his return of income is not bona fide. The explanation offered by the

assessee is available on record. Bona fide failure on the part of the assessee in not substantiating his claim is also available on record. The Income-tax Officer, while passing the order of penalty under Section 271(1)(c) of the Act, has not considered the available explanation of the assessee and whether the explanation so offered is bona fide or not. 10. The Tribunal, by considering these facts, concluded that the levy of penalty by the Income-tax Officer and the confirmation of the same by the Commissioner of Income-tax (Appeals) is not just and proper and set aside the same. The order of the Tribunal in setting aside the penalty proceedings on the basis of the material on record, in our opinion, is just and proper. 11. For the reasons stated, the question of law referred to us is answered in the affirmative and against the Revenue. Ordered accordingly.