Karnataka High Court Commissioner Of Income-Tax vs K.P. Sampath Reddy on 3 June, 1991 Equivalent citations: 1992 197 ITR 232 KAR, 1992 197 ITR 232 Karn Author: K S Bhat Bench: K S Bhat, R Ramakrishna JUDGMENT K. Shivashankar Bhat, J. 1. The following question under the provisions of the Income-tax Act, 1961, has been referred for our consideration : "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in cancelling the penalty of Rs. 83,278 levied under section 271(1)(c) for the assessment year 1967-77 ignoring the fact the assessee had not only admitted the concealment of income by his letter dated March 28, 1979, but his books of account also showed that the assessee had concealed his income ?" 2. The assessee had filed a return of his income at Rs. 11,310 for the assessment year 1976-77; the assessee is doing business in kirana. The Income tax Officer suspected the correctness of this return. Thereafter, the assessee filed a revised return showing an income of Rs. 69,800. The assessment order dated March 28, 1979, shows that there was a survey of his business and impounding of the books which recorded several erroneous entries. While the investigation was in progress as to the stocks, sales and various cash credit entries, the assessee filed his revised returns for the years 1972-73, 1973-74 and 1974-75 in response to a notice issued under section 148, in which the assessee disclosed a total income of Rs. 3,00,840 for the three years. The Income-tax Officer found the books of account not dependable and the income stated in the revised returns unacceptable. The Income-tax Officer had before him the details of the assessee's assets and liabilities as on March 31, 1978, and the expenditure incurred by the assessee, as stated by the assessee. From these, ultimately, on a consideration of several factors, the total income for the years 1972-73 to 1977-78 was estimated at Rs. 6,00,000. For the assessment year 1976-77, the income allocated for the period thus arrived at was Rs. 1,44,000. 3. On the date of the assessment the assessee gave a letter to the Income-tax Officer agreeing to the total income of Rs. 6,00,000 as estimated by the Income-tax Officer. The Income-tax Officer concluded the assessments and then simultaneously penalty proceedings were initiated, inter alia under section 27(1)(c) for concealment of income by the assessee in the returns filed by the assessee; subsequently, penalty was levied at 100 per cent. of the tax levied, which was the minimum penalty leviable, in case the situation warranted levy of penalty. 4. The assessee appealed and contented that he agreed to have the assessments made on a total income of Rs. 6,00,000 for the years 1972-73 to 1977-78, and the assessment order was result of the agreement with the Revenue and, therefore, penalty ought not to have been levied. The alleged agreement was held not proved by the Commissioner (Appeals). The Appellate Tribunal, however, held : "We find that the assessment was based only on the letter of settlement dated March 28, 1979. The assessment order does not show any other basis for determining the income assessable for this assessment year. Though reference has been made to the survey conducted and the revised return filed by the assessee, they have all been disregarded in determining the assessable income which is based exclusively on the letter dated March 28, 1979. No doubt, that letter amount to admission of concealment of income. But, it is not unequivocal admission. If the Revenue

wants to take the easy way out and make assessment on the basis of the letter filed by the assessee, it has to be taken in toto and cannot be relied upon in part. Since the assessment was made on the agreement of the assessee, if follows that the Revenue is bound to honour the other part of the agreement not to impose any penalty. If this letter is to be ignored, then we find that there was no basis for the assessment order and no evidence has been concealed by the assessee. Since penalty cannot be imposed without regard to the letter of the assessee and it cannot be imposed on the basis of the letter of the assessee the imposition of penalty is devoid of any foundation." 5. Mr. Chanderkumar, learned counsel, seriously challenged the very basis of the Appellated Tribunal's order. Learned counsel pointed out from the assessment order that the basis of the assessment was not the assessee's letters, but the inferences drawn from an independent investigation of the circumstances. Sri Sarangan, learned counsel for the assessee, urged that the assessee agreed to the assessment and thereby the Revenue has the benefit of non-contest of the order by way of appeal, etc., and, therefore, penalty should not have been levied. 6. We are constrained to reject the assessee's contention. We are pained to note that the Appellate Tribunal completely ignored the assessment order which was not based on any concession by the assessee. Concealment of income in the return filed by the assessee is a glaring fact, in the instant case. It is not possible to infer any agreement by the Revenue, either in clear terms or by necessary implication, to act on the basis of the assessee's letter. The assessee has to thank himself that the Income-tax Officer levied the minimum penalty only. 7. The question is, therefore, answered in the negative and in favour of the Revenue. 8. Reference answered accordingly.