

Haji Ghulam Hussain vs Commr. Of Income-Tax, United ... on 18 November, 1952

Equivalent citations: AIR1954ALL26, [1953]23ITR309(ALL), AIR 1954 ALLAHABAD 26

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The question referred to this Court under Section 66 (1), Income-tax Act is as follows:

"Whether in the circumstances of the case, the Appellate Assistant Commissioner had jurisdiction to issue a notice under Section 28 (3) and impose a penalty under Section 28 (1) (a), Income-tax Act?"

2. The assessee in reply to a notice under Section 22 (2), Income-tax Act had filed his return, but he had not mentioned the status in which the return was being filed, nor had he given the date on which he had filed his return. The form prescribed in the Indian Income-tax Act requires these facts to be also mentioned in the return that is to be filed by an assessee. The Income-tax Officer, however, overlooked the defects and proceeded to complete the assessment. In the course of the assessment proceedings he discovered certain deliberate omissions made in the account books and he, therefore, issued a notice to the assessee to show cause why penalty under Section 28 (1) be not imposed on him. The assessee furnished such explanations as he thought proper, but the Income-tax Officer was satisfied that the assessee had deliberately furnished inaccurate particulars of his income and he imposed a penalty of Rs. 3,000/- under Section 28 (1) (c), Indian Income-tax Act. Against the order passed by the Income-tax Officer an appeal was filed under Section 30. It was urged by the assessee that the Income-tax Officer could not impose a penalty under Section 28 (1) (c) as his return, being defective in the two particulars mentioned above, was not a return furnished in accordance with the provisions of the Act. The Appellate Assistant Commissioner accepted this contention, but issued a notice to the assessee to show cause why a penalty should not be imposed under Section 28 (1) (a). Ultimately, on 14-4-1947, the Appellate Assistant Commissioner passed final orders in the appeal and he came to the conclusion that the question of imposing a penalty under Section 28 (1) (c) did not arise as no valid return had been filed, and imposed the same penalty of Rs. 3,000/- under Section 28 (1) (a) on the ground that the assessee had without reasonable cause failed to furnish the return of his total income which he was required to furnish by

notice under Section 22. There was a further appeal to the Appellate Tribunal, which, however, dismissed the appeal and, on an application made by the assessee, has sent to us the question mentioned above for our decision.

3. Learned counsel has urged that the Appellate Asst. Commissioner was only seized of the appeal filed under Section 30 against the order passed under Section 28 (1) (c) and he could deal with the appeal in one of the manners mentioned in Section 31; and he could not, therefore, issue a fresh notice under Section 28 and impose a fresh penalty under Section 28 (1) (a). Learned counsel has relied on the provisions of Section 31 (3) (f) of the Income-tax Act which provides that:

"In disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order" under Section 28..... "confirm or cancel such order or vary it so as either to enhance or reduce the penalty....."

In short, the argument is that the Appellate Assistant Commissioner could either confirm the order of the Income-tax Officer, or cancel the order, or vary it as regards the amount) but he could not, according to learned counsel, set aside the order imposing a penalty under Section 28 (1) (c) and impose a fresh penalty under Section 28 (1) (a), though it may be in like amount. Reliance is placed on a decision of the Lahore High Court in -- 'Banarsi Das v. Commr. of Income-tax, Punjab & N. W. F. P.', AIR 1936 Lah 585 at p. 587 (A). In that case, there was an assessment made by the Income-tax Officer under Section 23 (4) against which order no appeal had then been provided. The assessee, however, in spite of the fact that he had no right of appeal, had filed an appeal which was not admitted by the Appellate Assistant Commissioner. Though the Appellate Assistant Commissioner did not admit that appeal and was of the opinion that he had no jurisdiction to entertain it, the assessment order being under Section 23 (4), he proceeded to impose a penalty under Section 28, and the Lahore High Court held, if we may say so with respect rightly, that there being no proceedings in the eye of law before the Appellate Assistant Commissioner, the Appellate Assistant Commissioner could not exercise any of the powers mentioned in Section 28. In the case before us it cannot be doubted that an appeal did lie to the Appellate Assistant Commissioner against the order of the Income-tax Officer passed under Section 28 (1) (c). Section 30 expressly provides for appeals 'inter alia' against the orders passed under Section 28. There was, therefore, a competent proceeding pending before the Appellate Assistant Commissioner. Section 28 (1), Indian Income-tax Act provides that if the Appellate Assistant Commissioner has before him any proceedings under the Act, then if he is satisfied that it is necessary to pass any orders under the various clauses mentioned in that section, he has authority to do so. As we have already said, there can be no doubt, and it is not disputed by learned counsel, that there were valid proceedings pending before the Appellate Assistant Commissioner and thus he had jurisdiction to pass an order under Section 28 (1) (a) if he thought that such an order should be passed on the facts and circumstances of the case.

4. It is not necessary for us to consider the question whether the Appellate Assistant Commissioner was right in his view that the return, being defective in the two particulars mentioned above, was not a return at all, nor is it necessary to consider whether it was open to the assessee to plead that by reason of the fact that he had made a mistake in not furnishing the date and in not furnishing the status in which he wanted to be assessed he could claim that his return was invalid or that he must

be deemed not to have filed it. On the view taken by the Appellate Assistant Commissioner, the assessee had failed to furnish a return of his total income in the manner required by the notice under Sub-section (2) of Section 22. The Appellate Assistant Commissioner was, therefore, entitled, while dealing with the appeal pending before him, to pass an order under Section 28 (1) (a) imposing a penalty.

5. Learned counsel has urged that, after the appeal had been disposed of, the Appellate Assistant Commissioner had no jurisdiction to start a fresh proceeding by issuing a fresh notice. This argument is, however, based on a misapprehension. We have seen the order of the Appellate Assistant Commissioner and we find that by the same order dated 14-4-1947, he finally disposed of the appeal and, though he changed the clause under which penalty was imposed and instead of imposing the penalty under Section 28 (1) (c) he held that the penalty should have been imposed under Section 28 (1) (a), yet he did not vary the amount and dismissed the appeal.

6. Our answer to the question, therefore, is in the affirmative.

7. The Department is entitled to its costs which we assess at Rs. 300/-.