Virkey Chacko vs C.I.T on 24 August, 1993

Equivalent citations: 1994 SCC, SUPL. (1) 264 JT 1993 (5) 58

Author: S.P Bharucha

Bench: S.P Bharucha, B.P. Jeevan Reddy

PETITIONER:
VIRKEY CHACKO

Vs.

RESPONDENT:
C.I.T.

DATE OF JUDGMENT24/08/1993

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1994 SCC Supl. (1) 264 JT 1993 (5) 58
1993 SCALE (3)537

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by BHARUCHA, J.- This is an appeal on a certificate granted by the High Court of Kerala. The judgment under appeal was delivered on a reference under Section 256(2) of the Income Tax Act, 1961. It answered in the negative, that is, against the appellant (assessee) and in favour of the Revenue (respondent), the following question:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the Income Tax Officer had no jurisdiction to levy the penalty and that he should have referred the case to the Inspecting Assistant Commissioner for imposition of penalty?"

2.The reference pertained to the Assessment Year 1968-69, the relevant accounting period having ended on March 31, 1968.

3.The assessee filed his return on April 16, 1970. With effect from April 1, 1971, sub-section (2) of Section 274 of the Income Tax Act, 1961, was amended. Prior to the said amendment where, in a case falling under clause (iii) of sub-section (1) of Section 271, the minimum penalty imposable exceeded the sum of Rs 1000, the Income Tax Officer was obliged to refer the case to the Inspecting Assistant Commissioner. By reason of the said amendment the Income Tax Officer was obliged to refer to the Inspecting Assistant Commissioner such cases falling under clause (c) of sub-section (1) of Section 271 where the amount of income, as determined by the ITO on assessment, in respect of which particulars had been concealed or inaccurate particulars had been furnished exceeded the sum of Rs 25,000. On March 27, 1972, the ITO made the orders of assessment and initiated penalty proceedings against the assessee on the basis of a finding recorded in the assessment order that there had been concealment of income in respect of an amount which did not exceed Rs 25,000. After considering the assessee's objections, the ITO, by order dated March 26, 1974, imposed a penalty of Rs 10,000.

4.The assessee appealed to the Appellate Assistant Commissioner, who set aside the penalty order on the ground that the ITO did not have the jurisdiction to levy the penalty. The Revenue carried the matter to the Income Tax Appellate Tribunal, which confirmed the order of the AAC. It held that the law governing the imposition of penalty for concealment of income was the law that was in force on the date on which the return in which the concealment had been made was filed and that the said amendment had no application to the case because it had not been made expressly retrospective.

5.Arising out of the order of the Tribunal, the question quoted above was referred to the High Court. The High Court noted that the question to be considered was whether the proceedings for imposition of penalty taken in the case were governed by the provisions of Section 274(2) as they stood prior to the said amendment or whether it was the sub- section as amended that would apply. It concluded that the competence or jurisdiction of the authority to initiate the penalty proceedings could be governed only by the law which was in force on the date of initiation of such proceedings. A combined reading of Section 271(1)(c)(iii) and Section 274(2) provided a clear indication that under the provisions of Section 274(2) as they stood prior to the amendment of 1970 the competence of the ITO to exercise the power of imposition of penalty against an assessee under Section 271 (1)(c) was to depend upon the findings arrived at by him in the assessment proceedings as to the factum of concealment and the amount of income in respect of which such concealment had taken place. It was only on arriving at such a finding that the question of initiation of penalty proceedings could arise. In this connection, the High Court referred to the judgment of this Court in Jain Brothers v. Union of India'. Accordingly, the Tribunal was held to be in error and the question referred to the High Court was answered in the negative, that is, against the assessee and in favour of Revenue.

6.Section 27 1 (1)(c) confers upon the assessing authority the power to direct an assessee to pay a penalty where he is satisfied that the assessee has concealed the particulars of his income or has furnished inaccurate particulars of his income. Section 274(2), before it was amended by the Taxation Law (Amendment) Act, 1970, with effect from April 1, 197 1, read thus:

"Notwithstanding anything contained in clause

(iii) of sub-section (1) of Section 271, if in a case falling under clause (c) of that sub-

section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty." After the said amendment, it read thus:

"Notwithstanding anything contained in clause

(iii) of sub-section (1) of Section 271, if in a case failing under clause (c) of that sub-

section, the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees the Income Tax Officer shall refer the case to the 1 (1969) 3 SCC 311: (1970) 77 ITR 107 Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

7.Learned counsel for the assessee submitted that the offence of concealment had been committed when the return had been filed; that, therefore, the unamended provisions of Section 274(2) applied and the ITO had no authority to impose the penalty. He relied upon the judgment of this Court in CIT v. Onkar Saran and SonS2. Emphasis was laid upon the statement in the judgment that, after the decision of this Court in Brij Mohan v. CIT3 there could be no doubt that the law applicable to penalty proceedings under Section 271(1)(a) or (c) was the law that was in force on the date on which the offending return had been filed.

8.The issue in the cases of Onkar Saran2 and Brij Mohan3 related to the quantum of penalty that could be demanded, and it was in that context that the statement that was emphasised was made. In Brij Mohan case3 it was expressly stated that a penalty was imposed on account of the commission of a wrongful act and "it is the law operating on the date on which the wrongful act is committed which determines the penalty".

9.Learned counsel for the Revenue drew our attention, first, to this Court's judgment in Jain Brothers'. It was there held, inter alia that it was the satisfaction of the income tax authorities that a default had been committed by the assessee which attracted the provisions relating to penalty. Whatever the stage at which the satisfaction was reached, the order imposing the penalty had to be made only after the completion of the assessment. The crucial date, therefore, for purposes of penalty was the date of such completion. In D.M. Manasvi v. CIT4 this was reiterated. Counsel for the Revenue laid great stress upon the judgment of this Court in CIT v. Dhadi Sahu5. In this case the assessee had failed to disclose certain income falling to the share of his minor children for the Assessment Years 1968-69 and 1969-70. The ITO passed assessment orders on February 28, 1970 and initiated penalty proceedings under Section 271(1)(c). Since the amounts of the penalty to be imposed would exceed Rs 1000, the ITO referred the cases under Section 274(2), as it then stood, to

the IAC. Pending the penalty proceedings, Section 274(2) was amended with effect from April 1, 1971, as a result of which only cases of penalty in which the income concealed was Rs 25,000 or more were required to be referred to the IAC. In the assessee's case referred to the IAC the income concealed was less than Rs 25,000. Even so, the IAC passed orders on February 15, 1973, imposing penalty in the sums of Rs 24,000 and Rs 12,500 respectively for the Assessment Years 1968-69 and 1969-70. This Court held that the reference had been validly made by the ITO to the IAC before April 1, 1971 and the question was whether the amendment that came into effect on April 1, 1971 divested the IAC of his jurisdiction because the amount of concealed income did not exceed Rs 25,000 and the case did not fall within the ambit of Section 274(2) as amended. The amending Act, it was noted, did not make any provision that references validly pending before the IAC had to be returned without passing any final orders if 2 (1992) 2 SCC 514 3 (1979) 4 SCC 118: 1979 SCC (Tax) 294: (1979) 120 ITR 1 4 (1973) 3 SCC 207: 1973 SCC (Tax) 155: (1972) 86 ITR 557 5 1994 Supp (1) SCC 257 :(1993) 199 ITR 610 the amount of income in respect of which particulars had been concealed did not exceed Rs 25,000. This supported the inference that in a pending reference the IAC continued to have jurisdiction to impose a penalty. The previous operation of Section 274(2) as it stood before April 1, 1971 and anything done thereunder continued to have effect under Section 6(b) of the General Clauses Act, 1897, enabling the IAC to pass orders imposing penalty in pending references. What was material was the date upon which the references were initiated. If the references had been made before April 1, 1971, they would be governed by Section 274(2) as it stood before that date and the IAC had jurisdiction to pass orders of penalty.

10.Learned counsel for the Revenue submitted that the ITO had, in the instant case, satisfied himself that there had been concealment of income on March 27, 1972, when he made the order of assessment. Such satisfaction was a pre- requisite to the initiation of the penalty proceedings, which were initiated on the same day. On that day, under the amended provisions of Section 274(2), the ITO had the authority to impose the penalty upon the assessee. Therefore, the High Court had answered the reference correctly.

11.A penalty for concealment of particulars of income or for furnishing inaccurate particulars of income can be imposed only when the assessing authority is satisfied that there has been such concealment or furnishing of inaccurate particulars. A penalty proceeding, therefore, can be initiated only after an assessment order has been made which finds such concealment or furnishing of inaccurate particulars. Who at this point of time has the authority to impose the penalty is what is relevant. Whoever this authority may be, he is obliged to impose such penalty as was permissible under the law in that behalf on the date on which the offence of concealment of income was committed, that is to say, on the date of the offending return. The two aspects must firmly be borne in mind, namely, who may impose the penalty and in what measure.

12.In the instant case, when the ITO reached the satisfaction that the assessee had concealed income and made the assessment order on March 27, 1972, the amended provisions of Section 274(2) were in operation and they entitled the ITO to impose penalty in cases where the amount of income in respect of which particulars had been concealed was, as here, less than Rs 25,000.

13.We are, therefore, of the view that the High Court answered the question referred to it correctly. The appeal, therefore, is dismissed, with no order as to costs.