

Commissioner Of Income Tax ... vs Jeevan Lal Sah on 16 September, 1993

Equivalent citations: [1994]205ITR244(SC), 1995SUPP(4)SCC247, AIR ONLINE 1993 SC 261, (1994) 117 CURTAXREP 130, (1994) 120 TAXATION 441, (1994) 205 ITR 244, (1994) 73 TAXMAN 182, 1995 SCC (SUPP) 4 247, 2017 (12) SCC 725

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

ORDER

B.P. Jeevan Reddy, J.

1. The appeals are preferred by the Revenue against the judgment of the Allahabad High Court see 1977 109 ITR 474, answering the question in favour of the assessee and against the Revenue. These appeals are preferred on a certificate granted by the High Court and the only question in respect of which the certificate is granted is (at page 476) :

Whether, on the facts and circumstances of the case, the Tribunal was right in holding that no penalty could be imposed with reference to the cash deposits on the principle of Anwar Ali's case 1970 76 ITR 696 (SC), even after the amendment of Section 271 in 1964 ?

2. The assessment years concerned herein are 1962-63, 1963-64, 1965-66, 1966-67 and 1967-68. The assessee is an individual running a tea-stall in Nainital. The returns filed by him were not accepted and assessment was completed on best judgment. Subsequently, certain information came into the possession of the Department which indicated concealment of income in respect of those years. A notice under Section 148 was issued to the assessee in response to which he filed revised returns. In the revised returns, he disclosed the interest received by him on certain cash deposits which deposits were not disclosed in the earlier returns. Reassessment was completed, where after proceedings were initiated under Section 271(1)(c) of the Act. It is not really necessary for us to state the several facts of the case except to mention that the question before the High Court was whether the Explanation to Sub-section (1) of Section 271, added by the Finance Act, 1964, with effect from April 1, 1964, makes any difference to the position of law obtaining till then, as explained in this Court's decision in CIT v. Anwar Ali . The Explanation introduced in 1964 reads as follows :

Explanation.-Where the total income returned by any person is less than eighty per cent, of the total income (hereinafter in this Explanation referred to as the correct income) as assessed under Section 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of clause (c) of this sub-section.

3. The High Court is of the opinion that introduction of the Explanation does not make any difference to the principles enunciated in Anwar Ali's case 1970 76 ITR 696 (SC)

4. Anwar Ali's case 1970 76 ITR 696 (SC) dealt with Section 28(1)(c) of the Indian Income-tax Act, 1922. Section 28(1)(c), in so far as is relevant, read as follows :

28. Penalty for concealment of income or improper distribution of profits.-(1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, is satisfied that any person-

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income. . . .

5. Section 271(1)(c) of the Income-tax Act, 1961, as originally enacted, was to the same effect. By the Finance Act, 1964, however, the word "deliberately" occurring in clause (c) was omitted and the Explanation aforementioned was added. The question is whether the principles enunciated in Anwar Ali's case 1970 76 ITR 696 (SC) continue to be good law even after the aforesaid amendment effected by the Finance Act, 1964.

6. The following principles were enunciated in Anwar Ali's case 1970 76 ITR 696 (SC) :

(a) The proceedings under Section 28 are penal in character.

(b) It is for the Department to establish that the receipt of the amount in dispute constitutes income of the assessee and that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income. If there is no evidence on 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.

(c) The finding recorded in the assessment proceedings that a particular receipt is his income after rejecting the explanation given by the assessee as false, would [not ?] prima facie be sufficient for establishing in proceedings under Section 28 that the disputed amount was the assessee's income. The finding recorded in the assessment

proceedings may be good evidence but is not conclusive.

(d) Before penalty can be imposed, the entirety of the 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.

7. That was a case where an undisclosed cash deposit was discovered and the explanation offered by the assessee in that behalf was rejected but the Revenue did not adduce any further material from which it could be inferred that the assessee had concealed the particulars of his income or had deliberately furnished inadequate particulars in respect of the same or that the disputed amount was a revenue receipt. In that situation, this Court agreed with the High Court that the levy of penalty was not warranted. Indeed, this Court approved the approach and tests evolved by Chagla C.J. in CIT v. Gokuldas Harivallabhdas. Certain other High Courts including Gujarat and Patna had also taken the same view.

8. Evidently, with a view to making the task of the Revenue in such matters less difficult, Parliament effected the said amendments by the Finance Act, 1964. Not only the word "deliberately" was omitted in Clause (c), but the Explanation aforesaid was added. The Explanation creates a presumption of law-which is no doubt rebuttable. The presumption of law created by the Explanation is to the following effect : where the total income returned by any person is less than 80 per cent, of his total assessed income, such person shall be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part. The Explanation, thus, shifts the burden of proof to the assessee in the situation covered by it. Once the returned income is shown to be less than 80 per cent, of the total income assessed, the presumption comes into play and then the burden shifts to the assessee to establish that his failure to return the correct income was not on account of any fraud or gross or wilful neglect on his part. If he fails to establish the same, the presumption will become a finding-and it would be open to the authority to levy the penalty. But if the assessee establishes that his failure to return the correct income was not on account of any fraud or any gross or wilful neglect on his part, it is evident, no penalty can be levied.

9. Even after the amendment of 1964, the penalty proceedings, it is evident, continue to be penal proceedings. Similarly, the question whether the assessee has concealed the particulars of his income or has furnished inaccurate particulars of his income continues to remain a question of fact. Where the Explanation has made a difference is-while deciding the said question of fact the presumption created by it has to be applied, which has the effect of shifting the burden of proof. The entire material on record has to be considered keeping in mind the said presumption and a finding recorded. The rule regarding burden of proof enunciated in Anwar Ali's case 1970 76 ITR 696 (SC) is no longer valid. This is the view taken by this Court in two decisions rendered with reference to the said Explanation. In CIT v. Mussadilal Ram, Bharose, this Court summarised the position in the following words (at page 22) :

The position, therefore, in law is clear. If the returned income is less than 80 per cent, of the assessed income, the presumption is raised against the assessee that the assessee is guilty of fraud or gross or wilful neglect as a result of which he has concealed the income but this presumption can be rebutted. The rebuttal must be on materials relevant and cogent. It is for the fact-finding body to judge the relevancy and sufficiency of the materials. If such a fact-finding body, bearing the aforesaid principles in mind, comes to the conclusion that the assessee has discharged the onus, it becomes a conclusion of fact. No question of law arises.

10. In the said decision, this Court approved the interpretation placed upon the said Explanation by a Full Bench of the Punjab and Haryana High Court in *Vishwahanna Industries v. CIT*. To the same effect is the decision in *CIT v. K.R. Sadayappan* 1990 185 ITR 49 (SC). In this decision, this Court did not approve the reasoning of the Tribunal based upon *Anwar Ali's case* 1970 76 ITR 696 (SC), inasmuch as the assessment year concerned therein was 1966-67 and, therefore, governed by the said Explanation. It is true that it was an appeal against an order of the High Court rejecting the application of the Revenue under Section 256(2) of the Act, even so the following pertinent observations were made (at page 54) :

It is true that the presumption that arose was a rebuttable presumption that there was concealment of income and if there was cogent material to rebut the evidence that was acceptable, then the presumption would not stand. In the instant case, the falsity of the explanation given by the assessee has been accepted by the Tribunal. The Tribunal stated that, in the instant case, no doubt the Income-tax Officer was justified in saying that not only the explanation was not convincing but false because there was no cash available to the assessee for payment of the extra money paid. Therefore, no explanation was put forward as to wherefrom the extra money came. If that was the position and the further presumption was that the assessee was guilty of fraud, then the subsequent presumption followed that the assessee has concealed the income and that can be rebutted only by cogent and reliable evidence. No such attempt in this case was made. In that view of the matter, in our opinion, it cannot be said that, in this case, the Tribunal was justified in rejecting the claim and penalty may be imposed. The presumption raised as aforesaid, that is to say, that the assessee was guilty of fraud or wilful neglect as a result of which the assessee has concealed the income, would be there. This presumption could have been rebutted by cogent, reliable and relevant materials. There was none, at least neither the Tribunal nor the High Court has indicated any. If that is the position, the High Court, in our opinion, was in error in not correctly applying the principles laid down by this Court in *CIT v. Mussadilal Ram Bharose* 1987 165 ITR 14 (SC), and the principles of law applicable in a situation of this type to the facts of this case and, therefore, the decision is not sustainable.

11. It is thus clear that the question referred to the High Court in this case is no longer *res integra*. The decisions of this Court aforesaid clearly point out the change that has been brought about by the introduction of the said Explanation.

12. The question referred to the High Court in this case speaks of cash deposits. Whether it is a case of undisclosed or unexplained cash deposit or any other concealment, the standard is the same. The principle enunciated in Anwar All's case 1970 76 ITR 696 (SC), that mere rejection of the Explanation of the assessee is not sufficient for levying penalty and that the Revenue must go further and establish that there has been a conscious concealment of particulars of income or a deliberate failure to furnish accurate particulars, is no longer necessary. The cases to which the said Explanation is attracted have to be decided in the light of the law enunciated in Mussadilal Ram Bharose's case 1987 165 ITR 14 (SC) and Sadayappan's case 1990 185 ITR 49 (SC).

13. In this case, we are concerned with five assessment years as indicated hereinabove. We are not furnished with the dates on which returns were filed for each of the said five assessment years. So far as the three subsequent assessment years, viz. 1965-66, 1966-67 and 1967-68 are concerned, it cannot but be that the returns were filed subsequent to April 1, 1964, and if so, the penalty proceedings with respect to these three assessment years will be governed by and have to be disposed of in the light of Section 271(1)(c) read with the Explanation. So far as the earlier two assessment years are concerned, no opinion can be expressed by us in the absence of relevant particulars.

14. For the above reasons, the appeals are allowed in part as indicated hereinbefore. Appropriate orders shall be passed by the Tribunal in the matter in accordance with law and the observations in this judgment. There shall be no order as to costs.