Gujarat Travancore Agency, Cochin vs Commissioner Of Income-Tax,Kerala, ... on 2 May, 1989

Equivalent citations: 1989 AIR 1671, 1989 SCR (2)1000, AIR 1989 SUPREME COURT 1671, 1991 TAX. L. R. 57, (1989) 2 JT 446 (SC), 1989 2 JT 446, (1989) 1 SIM LC 322, (1989) 19 ECC 49, (1989) 20 ECR 1, 1989 (1) SCC 345, 1989 SCC(TAX) 84, (1990) 183 ITR 624, (1989) 2 KER LT 1, 1989 SCC (CRI) 509, (1988) 4 JT 454 (SC), (1989) 77 CURTAXREP 174, (1989) 44 TAXMAN 278, (1988) 38 ELT 741, (1989) 42 ELT 350, (1989) 177 ITR 455, 1989 (3) SCC 52

Author: R.S. Pathak

Bench: R.S. Pathak, M.H. Kania

PETITIONER:
GUJARAT TRAVANCORE AGENCY, COCHIN

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX,KERALA, ERNAKULAM

DATE OF JUDGMENT02/05/1989

BENCH:
PATHAK, R.S. (CJ)
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PATHAK, R.S. (CJ)
KANIA, M.H.

CITATION:
1989 AIR 1671 1989 SCR (2)1000
1989 SCC (3) 52 JT 1989 (2) 446
1989 SCALE (1)1275
CITATOR INFO :
F 1992 SC1762 (10)

ACT:
Income Tax Act 1961: Section 271(1)(a) and 276C--Failure to furnish returns--Penalty--Means rea--Not required to be proved in proceedings under section 271(1)(a)--To be established in proceedings under section 276-C.

HEADNOTE:
The assessee appellant did not file its income-tax

returns under the Income Tax Act, 1961 for the assessment years 1965-66, 1966-67 within the statutory period. It was only after notices under s. 139(2) of the Act were served on the assessee the returns were filed. In the said circumstances the Income Tax Officer initiated penalty proceedings against the assessee under s. 271(1)(a) of the Act for the two assessment years and imposed penalties.

The explanation of the assessee that he was under the bona fide belief that he had no assessable income and had, therefore, not filed the returns earlier was not accepted by the Income-tax Officer.

The Appellate Assistant Commissioner dismissed the appeal, but in second appeal the Appellate Tribunal allowed the appeal holding that the Income Tax Officer had failed to bring on record any material to show that the explanation of the assessee tendered before him in regard t9 the delay should not be accepted, and that as the element of mens rea was required to be proved and had not been proved, the penalties were liable to be cancelled.

The Appellate Tribunal at the instance of the Revenue referred the question to the High Court, and a Full Bench of the High Court took the view that mens rea need not be established before penalty is imposed under s. 271(1)(a) of the Act, and the Appellate Tribunal was therefore not justified in cancelling the penalties levied for the two assessment years.

On the question whether the element of mens tea is a mandatory requirement before a penalty can be imposed under section 271(1)(a) of
1001
the Income Tax Act, 1961.
Dismissing the appeal, the Court.

HELD: 1. A penalty may be imposed under section 271(1)(a) if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income. while s. 276C provides that if a person wilfully fails to furnish in due time the return of income required under s. 139(1) he shall be punishable with rigorous imprisonment which may extend to one year or with fine. It is, therefore, clear that in the former case what was intended was a civil obligation, while in the latter what is imposed is a criminal sentence. [1003E-F]

2. There can be no dispute that having regard to the provisions of s. 276C, which speaks of wilful failure on the part of defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. [1003G-H]

3. The creation of an offence by Statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. [1004A-B]

4. Unless there is something in the language of the

statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. [1004B-C]

5. In a proceeding under s. 271(1)(a), it seems that the intention of the legislature is to emphasise the fact of loss of. Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present. in the penalty. In this connection the terms in which the penalty falls to be measured is significant. [1004B]

Corpus Juris Secundum, volume 85, page 580, para. 1023, referred to.

6. There is nothing in s. 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. [1004C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 63031 of 1975.

From the Judgment and Order dated 10.9.1974 of the Kerala High Court in Income Tax Reference Nos. 85 and 86 of 1972.

Soli J. Sorabjee, Udayu Lalit, D. Vidyanandan and M. Raghuraman for the Appellant.

D.V. Gauri Shankar and Ms. A. Subhashini for the Respondent. The Judgment of the Court was delivered by PATHAK, CJ. These appeals, by certificate granted by the High Court of Kerala, are directed against the judgment of that High Court answering the following question of law referred to it in an Income-tax Reference in favour of the Revenue and against the assessee:

> "Whether, on the facts and in the circum- stances of the case, the Tribunal is justified in law in cancelling the penalties levied under s. 271(1)(a) of the Income-tax Act, 1961, for the assessment years 1965-66, and 1966-67?"

The assessee is a registered firm trading in hill pro- duce. The assessee did not file its income-tax return under the Income-tax Act, 1961 for the assessment year 1965-66 within the statutory period, that is to say by 30 June, 1965, and instead applied for time to file the return. Time was granted up to 31.August, 1966. Yet no return was filed. It was only after notice under s. 139(2) of the Act was served on the assessee on 22 September, 1967 that it filed a return on the next day. Similarly for the assessment year 1966-67 no return was filed upto 30 June, 1966. No applica- tion for extension of time was made either. When notice under s. 139(2) was served on the assessee on 21 June, 1966 it filed a return on 23 September, 1967. In the circum- stances, the Income-tax Officer initiated penalty proceed- ings against the assessee under s. 271(1)(a) of the Act for the two assessment years. A sum of Rs. 14,784 was levied as penalty for the assessment year 1965-66 and a sum of Rs. 11,447 was imposed as penalty for the assessment year 1966-

67. The explanation of the assessee that he was under the bona fide belief that he had no assessable income and had, therefore, not filed the returns earlier was not accepted by the Income-tax Officer. In appeal before the Appellate Assistant Commissioner of Income Tax, the assessee did not press the ground that there was no deliberate omission on his part to file the returns and that therefore s. 271(1)(a) of the Act was not attracted. In second appeal before the Income-tax Appellate Tribunal permission was granted to the assessee to raise the ground. The Appellate Tribunal allowed the appeals holding that the Income-tax Officer had failed to bring on record any material to show that the explanation of the assessee tendered before him in regard to the delay should not be accepted, and that as the element of mens rea was required to be proved and had not been proved, the penalties were liable to be cancelled.

At the instance of the Revenue the Appellate Tribunal referred the question set forth earlier to the High Court of Kerala. It may be mentioned that another question was also referred, which related to the Appellate Tribunal entertain- ing the additional ground of appeal, but the appeals before us are not concerned with that question. The question with which we are concerned was referred to a Full Bench of the High Court, and the High Court has taken the view that mens rea need not be established before penalty is imposed under s. 271(1)(a) of the Act, and that, therefore, the Appellate Tribunal was not justified in cancelling the penalties levied for the two assessment years.

Learned counsel for the assessee has addressed an ex- haustive argument before us on the question whether a penal- ty imposed under s. 271(1)(a) of the Act:involves the ele- ment of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in Order to demonstrate that the proceedings by way of penalty under s. 271(1)(a) of the Act are quasi criminal in nature and that therefore the element of mens rea is a mandatory requirement before a penalty can be imposed under s. 271(1)(a). We are relieved of the neces- sity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to s. 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to s. 276C which provides that if a person wilfully fails to furnish in due time the return of income required under s. 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of s. 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of ' mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to dis- courage the repetition of the offence. In the case of a proceeding under s. 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is some- thing in the language of the statute indicating the need of establish the element of mens tea it is generally sufficient to prove that a default in

complying with the statute has occurred. In our opinion, there is nothing in s. 271(1)(a) which requires that mens tea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum, volume 85, page 580, paragraph 1023:

> "A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income tax Officer under s. 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 1966-67.

In the result the appeals fail and are dismissed with costs.

N.V.K. Appeals failed.