

Commissioner Of Income-Tax, U.P. vs Mithan Lal Ram Chandra on 25 March, 1971

Equivalent citations: [1971]82ITR470(SC)

JUDGMENT

R.S. Pathak, J.

1. This is an application under Section 66(2) of the Indian Income-tax Act, 1922, by the Commissioner of Income-tax, U. P., Lucknow.

2. The assessee is a Hindu undivided family. For the assessment year 1951-52, the Income-tax Officer took assessment proceedings against the assessee and during the proceedings discovered a number of credit entries in the account of Smt. Ram Kali Devi and Smt. Devi, wives of two members of the family. The assessee explained that the amounts proceeded out of the sale of ornaments for an amount of Rs. 25,168, and supported the explanation by parchas issued by one Banwari Lal Saraf of Delhi on September 27, 1950. Those parchas and the affidavit of Banwari Lal were filed by the assessee. The Income-tax Officer, however, did not accept the explanation of the assessee and treated the sum of Rs. 25,168 as the assessee's income from undisclosed sources. The finding was upheld in appeal by the Appellate Assistant Commissioner and, thereafter, in second appeal, by the Income-tax Appellate Tribunal. The Tribunal observed that it was not satisfied with the explanation rendered by the assessee, as satisfactory evidence had not been adduced in support of the explanation.

3. The Income-tax Officer initiated proceedings against the assessee for the imposition of a penalty, and on February 15, 1965, the Inspecting Assistant Commissioner of Income-tax made an order under Section 271(1)(c), Income-tax Act, 1961, imposing a penalty of Rs. 6,682. An appeal by the assessee against the penalty order was allowed by the Tribunal on March 21, 1966. The Tribunal held that the assessee had, prima facie, made out a case that the moneys arose out of the sale proceeds of the ornaments and that had not been rebutted by the Income-tax Officer and the charge of concealment of income had not been brought home to the assessee. The Tribunal was not satisfied that the Income-tax Officer had established beyond reasonable doubt that the amount in respect of which the penalty was sought to be imposed must be held to be the assessee's income and that he deliberately concealed the particulars of that income. The Commissioner of Income-tax applied to the Tribunal for a reference of the case, and the application having been rejected, this reference application has now been made.

4. It seems to us that the finding of the Tribunal is a finding of fact and we are unable to see that any question of law arises. The question suggested in the reference application is :

Whether, on the facts and in the circumstances of the case, the penalty under Section 271(1)(c) of the Income-tax Act, 1961, was justified in law ?

5. The Tribunal has found that it was not justified, and it has found so on its appraisal of the material on the record. Learned Counsel for the Commissioner points out that a number of circumstances have been referred to by the Inspecting Assistant Commissioner in the penalty order. It is said that an enquiry was made by the Income-tax Officer, Delhi, in regard to Banwari Lal and Banwari Lal had refused to produce his account books and was also reported to be notorious for making fictitious entries in his account books. So far as that is concerned it may be that Banwari Lal is not a reliable person, but that does not necessarily lead to the conclusion that the case of the assessee is false. It was for the Tribunal to consider as the final fact finding authority, whether the explanation set up by the assessee should be believed, and the Tribunal has found that prima facie it should be. It has further found that the department, in failing to adduce sufficient evidence in rebuttal, has not discharged its burden for the purpose of establishing that the assessee was guilty of concealing material facts in relation to its income.

6. Learned Counsel for the Commissioner relies upon Commissioner of Income-tax v. Indian Woollen Textiles Mills , in support of the proposition that where the Tribunal does not take into consideration all the material facts on the record while coming to its finding that finding is vitiated by an error of law. We are not satisfied that the Tribunal did not direct its mind to all the relevant material on the record. We are then referred to Commissioner of Income-tax v. Anwar Ali , where the Supreme Court has considered what should be the nature of the burden upon the income-tax department for establishing that the assessee is liable to payment of penalty. The Supreme Court observed that it was for the department to establish that the receipt of the income in dispute constituted the income of the assessee and that if there was nothing on the record except the explanation given by the assessee, and that explanation has been found to be not worthy of acceptance it does not follow that the receipt constitutes the assessee's taxable income. The Supreme Court also observed that the proceedings under Section 28 of the Act of 1922 were of a penal nature and the burden was on the department to prove that the particular amount was a revenue receipt and, therefore, in the nature of income, that it would have been perfectly legitimate to say that the mere fact that the explanation of the assessee was false does not necessarily give rise to the inference that the disputed amount represents income. The finding given in the assessment proceedings could not be said to be conclusive although it might constitute good evidence. Before penalty could be imposed, the Supreme Court added, the entirety of 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. After carefully perusing the material on the record and the considerations which the Tribunal has taken into account we are unable to hold that the finding of the Tribunal conflicts with the proposition of law laid down by the Supreme Court in that case. We have also been referred to Govindarajulu Mudaliar v. Commissioner of Income-tax , and Mithoo Lal Tek Chand v. Commissioner of Income-tax . Both those cases related to an assessment proceeding, and the court in each case held that the circumstances of the case, including the fact that the explanation of the assessee was not found satisfactory, constituted a good ground for holding that the amount in question represented the taxable income of the assessee. In our opinion, the law laid down by the Supreme Court in

Anwar Ali's case , represents what one might say is the last statement of the law in respect of the burden on the income-tax department relating to the power to impose penalty for concealment of income. In our opinion, the question suggested on behalf of the Commissioner is not a question of law which calls for a reference. The application is dismissed. As the assessee is not represented before us, there is no order as to costs. Counsel's fee is assessed at Rs. 100.