C. A. Abraham, Uppoottil, Kottayam vs The Income-Tax Officer, Kottayam And ... on 29 November, 1960

Equivalent citations: 1961 AIR 609, 1961 SCR (2) 765, AIR 1961 SUPREME COURT 609, 1961 (1) SCJ 373, 1961 41 ITR 425, 1961 2 SCR 765, 1961 KER LJ 165

Author: J.C. Shah

Bench: J.C. Shah, J.L. Kapur, M. Hidayatullah

PETITIONER:
C. A. ABRAHAM, UPPOOTTIL, KOTTAYAM

Vs.

RESPONDENT:
THE INCOME-TAX OFFICER, KOTTAYAM AND ANOTHER

DATE OF JUDGMENT:
29/11/1960

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
KAPUR, J.L.
HIDAYATULLAH, M.

CITATION:
1961 AIR 609 1961 SCR (2) 765
CITATOR INFO :

R	1961 SC1265	(8)
RF	1962 SC 970	(3,4)
R	1964 SC 825	(3,4)
R	1964 SC1095	(4,11)
D	1966 SC1295	(15)
E	1968 SC 162	(10,11)
F	1968 SC 816	(3)
E	1969 SC 835	(5)
R	1969 SC1352	(7)
R	1970 SC1173	(26)
E	1970 SC1782	(3)
D	1975 SC1549	(21,23,54)
F	1977 SC 459	(3)

ACT:
Income-tax--Suppression of income of Partnership firm--

Penalty, if can be imposed after dissolution of Partnership--Income-tax Act, 1922 (11 of 1922), SS. 28(I)(c), 44.

HEADNOTE:

The appellant who was carrying on business in food grains in partnership with another person submitted the returns of the income of the firm for the accounting years even after his partner's death. It was found that certain income of the firm was concealed and the Income-tax Officer not only assessed the firm to tax for the suppressed income but also imposed penalties for concealing the said income. Appeals to the higher income tax authorities failed and the appellant then applied to the High Court for a writ of certiorari quashing the orders of assessment and imposition of penalty on the ground inter alia that the firm was dissolved by his partner's death and no penalty could be imposed after dissolution of the firm, The High Court rejected the petition. On appeal with the certificate of the High Court,

Held, that by virtue of s. 44 and other provisions of the Income Tax Act a partner of a dissolved partnership firm may not only be made liable to assessment for income tax for the accounting years but despite dissolution of the firm he may be made liable to pay penalty for concealing the income of the firm under s. 28(1)(c) of the Act. The analogy of dissolution of a Hindu joint Family does not apply to dissolution of a partnership.

Mareddi Krishna Reddy v. Income-tax Officer, Tenali, [1957] 31 I.T.R. 678, approved.

Commissioner of Income-tax v. Ravalaseema Oil Mills, [1959] 37 I.T.R. 208 and S. V. Veerappan Chettiar v. Commissioner of Income-tax, Madras, [1957] 32 I.T.R. 411, disapproved.

Mahankali Subbarao v. Commissioner of Income-tax, [1957] 31 I.T.R. 867, distinguished.

The Legislature intended that the provisions of Ch. IV of the Act shall apply to a firm even after discontinuance of its business. In interpreting a fiscal statute the Court cannot proceed to make good deficiencies if there be any. In case of doubt it should be interpreted in favour of the tax payer.

The expression "assessment" has different connotations an has been used in its widest connotation in Ch. IV and S. 44

97

766

he Act. It is not restricted only to computation of tax but includes imposition of penalty on tax payers found in the process of assessment guilty of concealing income.

Commissioner of Income-tax, Bombay Presidency and Aden v. Khemchand Ramdas, [1938] 6 I.T.R. 414, referred to.

The Income-tax Act provided a complete machinery for

obtaining relief against improper orders passed by the Income-tax Authorities and the appellant could not be permitted to abandon that machinery, and invoke the jurisdiction of the High Court under Art. 226 of the Constitution against the orders of the taxing authorities.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 517 of 1958. Appeal from the judgment and order dated October 31, 1957, of the Kerala High Court in O. P. No. 215 of 1957. G. B. Pai and Sardar Bahadur, for the appellant. Hardyal Hardy and D. Gupta, for the respondents. 1960. November 29. The Judgment of the Court was delivered by SHAH, J.-C. A. Abraham hereinafter referred to as the appellant and one M. P. Thomas carried on business in food grains in partnership in the name and style of M. P. Thomas & Company at Kottayam. M. P. Thomas died on October 11, 1949. For the account years 1123, 1124 and 1125 M.E. corresponding to August 1947-July 1948, August 1948-July 1949 and August 1949-July 1950, the appellant submitted as a partner returns of the income of the firm as an unregistered firm. In the course of the assessment proceedings, it was discovered that the firm had carried on transactions in different commodities in fictitious names and had failed to disclose substantial income earned therein. By order dated November 29, 1954, the Income Tax Officer assessed the suppressed income of the firm in respect of the assessment year 1124 M.E. under the Travancore Income Tax Act and in respect of assessment years 1949-50 and 1950-51 under the Indian Income Tax Act and on the same day issued notices under s. 28 of the Indian Income Tax Act in respect of the years 1949-50 and 1950-51 and under s. 41 of the Travancore Income Tax Act for the year 1124 M.E., requiring the firm to show cause why penalty should not be imposed. These notices were served upon the appellant.

The Income Tax Officer after considering the explanation of the appellant imposed penalty upon the firm, of Rs. 5,000 in respect of the year 1124 M.-E., Rs. 2,O00 in respect of the year 1950-51 and Rs. 22,000 in respect of the year 1951-52. Appeals against the orders passed by the Income Tax Officer were dismissed by the Appellate Assistant Commissioner. The appellant then applied to the High Court of Judicature of Kerala praying for a writ of certiorari quashing the orders of assessment and imposition of penalty. It was claimed by the appellant inter alia that after the dissolution of the firm by the death of M. P. Thomas in October, 1949, no order imposing a penalty could be passed against the firm. The High Court rejected the application following the judgment of the Andhra Pradesh High Court in Mareddi Krishna Reddy v. Income Tax Officer, Tenali (1). Against the order dismissing the petition, this appeal is preferred with certificate of the High Court.

In our view the petition filed by the appellant should not have been entertained. The Income Tax Act provides a complete machinery for assessment of tax and imposition of penalty and for obtaining relief in respect of any improper orders passed 'by the Income Tax authorities, and the appellant could not be permitted to abandon resort to that machinery and to invoke the jurisdiction of the High Court under Art. 226 of the Constitution when he had adequate remedy open to him by an appeal to the Tribunal. But the High Court did entertain the petition and has also granted leave to the appellant to appeal to this court. The petition having been entertained and leave having been

granted, we do not think that we will be justified at this stage in dismissing the appeal in limine. On the merits, the appellant is not entitled to relief. The Income Tax Officer found that the appellant had, with a view to evade payment of tax, (1) (1957) 31 I.T.R. 678.

deliberately concealed material particulars of his income. Even though the firm was carrying on transactions in food grains in diverse names, no entries in respect of those transactions in the books of account were posted and false credit entries of loans alleged to have been borrowed from several persons were made. The conditions prescribed by s. 28(1)(c) for imposing penalty were therefore fulfilled. But says the appellant, the assessee firm had ceased to exist on the death of M. P. Thomas, and in the absence of a provision in the Indian Income Tax Act whereby liability to pay penalty may be imposed after dissolution against the firm under s. 28(1)(c) of the Act, the order was illegal. Section 44 of the Act at the material time stood as follows:

> "Where any business,...carried on by a firm..... has been discontinued ... every person who was at the time of such discontinuance ... a partner of such firm,... shall in respect of the income, profits and gain of the firm be jointly and severally liable to assessment under Chapter IV for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment."

That the business of the firm was discontinued because of the dissolution of the partnership is not disputed. It is urged however that a proceeding for imposition of penalty and a proceeding for assessment of income-tax are matters distinct, and s. 44 may be resorted to for assessing tax due and payable by a firm business whereof has been discontinued, but an order imposing penalty under s. 28 of the Act cannot by virtue of s. 44 be passed. Section 44 sets up machinery for assessing the tax liability of firms which have discontinued their business and provides for three consequences, (1) that on the discontinuance of the business of a firm, every person who was at the time of its discontinuance a partner is liable in respect of income, profits and gains of the firm to be assessed jointly and severally, (2) each partner is liable to pay the amount of tax payable by the firm, and (3) that the provisions of Chapter, so far as may be, apply to such assessment. The liability declared by s. 44 is undoubtedly to assessment under Chapter IV, but the expression "assessment" used therein does not merely mean computation of income. The expression "assessment" as has often been said is used in the Income Tax Act with different connotations. In Commissioner of Income Tax, Bombay Presidency & Aden v. Khemchand Ramdas (1), the Judicial Committee of the Privy Council observed:

> "One of the peculiarities of most Income-tax Acts is that the word "assessment" is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the tax-payer. The Indian Income-tax Act is no exception in this respect.....".

A review of the provisions of Chapter IV of the Act sufficiently discloses that the word "assessment" has been used in its widest connotation in that chapter. The title of the chapter is "Deductions and Assessment". The section which deals with assessment merely as computation of income is s. 23; but

several sections deal not with computation of income, but determination of liability, machinery for imposing liability and the procedure in that behalf. Section 18A deals with advance payment of tax and imposition of penalties for failure to carry out the provisions there- in. Section 23A deals with power to assess individual members of certain companies on the income deemed to have been distributed as dividend, s. 23B deals with assessment in case of departure from taxable territories, s. 24B deals with collection of tax out of the estate of deceased persons; s. 25 deals with assessment in case of discontinued business, s. 25A with assessment after partition of Hindu Undivided families and ss. 29, 31, 33 and 35 deal with the issue of demand notices and the filing of appeals and for reviewing assessment and s. 34 deals with assessment of incomes which have escaped assessment. The expression "assessment" used in these sections is not used merely in the sense of computation of income and there is in our judgment no ground for holding (1) [1938] 6 I.T.R. 414.

that when by s. 44, it is declared that the partners or members of the association shall be jointly and severally liable to assessment, it is only intended to declare the liability to computation of income under s. 23 and not to the application of the procedure for declaration and imposition of tax liability and the machinery for enforcement thereof. Nor has the expression, "all the provisions of Chapter IV shall so far as may be apply to such assessment" a restricted content: in terms it says that all the provisions of Chapter IV shall apply so far as may be to assessment of firms which have discontinued their business. By s. 28, the liability to pay additional tax which is designated penalty is imposed in view of the dishonest contumacious conduct of the assessee. It is true that this liability arises only if the Income-tax Officer is satisfied about the existence of the conditions which give him jurisdiction and the quantum thereof depends upon the circumstances of the case. The penalty is not uniform and its imposition depends upon the exercise of discretion by the Taxing authorities; but it is imposed as a part of the machinery for assessment of tax liability. The use of the expression "so far as may be" in the last clause of s. 44 also does not restrict the application of the provisions of Chapter IV only to those which provide for computation of income. By the use of the expression "so far as may be" it is merely intended to enact that the provisions in Ch. IV which from their nature have no application to firms will not apply thereto by virtue of s. 44. In effect, the Legislature has enacted by s. 44 that the assessment proceedings may be commenced and continued against a firm of which business is discontinued as if discontinuance has not taken place. It is enacted manifestly with a view to ensure continuity in the application of the machinery provided for assessment and imposition of tax liability notwithstanding discontinuance of the business of firms. By a fiction, the firm is deemed to continue after discontinuance for the purpose of assesment under Chapter IV.

The Legislature has expressly enacted that the provisions of Chapter IV shall apply to the assessment of a business carried on by a firm even after discontinuance of its business, and if the process of assessment includes taking steps for imposing penalties, the plea that the Legislature has inadvertently left a lacuna in the Act stands refuted. It is implicit in the contention of the appellant that it is open to the partners of a firm guilty of conduct exposing them to penalty under s. 28 to evade penalty by the simple expedient of discontinuing the firm. This plea may be accepted only if the court is compelled, in view of unambiguous language, to hold that such was the intention of the Legislature. Here the language used does not even tend to such an interpretation. In interpreting a fiscal statute, the court cannot proceed to make good deficiencies if there be any: the court must interpret the statute as it stands and in case of doubt in a manner favourable to the tax-payer. But

where as in the present case, by the use of words capable of comprehensive import, provision is made for imposing liability for penalty upon tax-payers guilty of fraud, gross negligence or contumacious conduct, an assumption that the words were used in a restricted sense so as to defeat the avowed object of the Legislature qua a certain class will not be lightly made. Counsel for the appellant relying upon Mahankali Subbarao v. Commissioner of Income Tax (1), in which it was held that an order imposing penalty under s. 28(1)(c) of the Indian Income Tax Act upon a Hindu Joint Family after it had disrupted, and the disruption was accepted under s. 25A(1) is invalid, because there is a lacuna in the Act, submitted that a similar lacuna exists in the Act in relation to dissolved firms. But whether on the dissolution of a Hindu Joint Family the liability for penalty under s. 28 which may be incurred during the subsistence of the family cannot be imposed does not fall for decision in this case: it may be sufficient to observe that the provisions of s. 25A and s. 44 are not in pari materia. In the absence of any such phraseology in s. 25A as is used in s. 44, no real analogy between the content of that section and s. 44 may be assumed. Undoubtedly, (1) [1957] 31 I.T.R. 867.

by s. 44, the joint and several liability which is declared is liability to assessment in respect of income, profits or gains of a firm which has discontinued its business, but if in the process of assessment of income, profits or gains, any other liability such as payment of penalty or liability to pay penal interest as is provided under s. 25, sub-s. (2) or under s. 18A sub-ss. (4), (6), (7), (8) and (9) is incurred, it may also be imposed, discontinuation of the business notwithstanding.

In our view, Chief Justice Subba Rao has correctly stated in Mareddi Krishna Reddy's case (supra) that:

> "Section 28 is one of the sections in Chapter IV. It imposes a penalty for the concealment of income or the improper distribution of profits. The defaults made in furnishing a return of the total income, in complying with a notice under sub-s. (4) of s. 22 or sub-s. (2) of s. 23 and in concealing the particulars of income or deliberately furnishing inadequate particulars of such income are penalised under that section. The defaults enumerated therein relate to the process of assessment. Section 28, therefore, is a provision enacted for facilitating the proper assessment of taxable income and can properly be said to apply to an assessment made under Chapter IV. We cannot say that there is a lacuna in s. 44 such as that found in s. 25A of the Act.
>
> We are unable to agree with the view expressed by the Andhra Pradesh High Court in the later Full Bench decision in Commissioner of Income Tax v. Rayalaseema Oil Mills (1), which purported to overrule the judgment in Mareddi Krishna Reddy's case (supra). We are also unable to agree with the view expressed by the Madras High Court in S. V. Veerappan Chettiar v. Commissioner of Income Tax, Madras (2). In the view taken by us, the appeal fails and is dismissed with costs.
>
> (1) [1959] 37 I.T.R. 208.
>
> Appeal dismissed. (2) [1957] 32 I.T.R. 411.