

Karnataka High Court

Commissioner Of Income-Tax, ... vs Jewels Paradise on 5 November, 1974

Equivalent citations: 1975 101 ITR 265 KAR, 1975 101 ITR 265 Karn

Author: S Iyengar

Bench: G G Bhat, M S Iyengar

JUDGMENT Srinivasa Iyengar, J.

1. The Income-tax Appellate Tribunal, Bangalore Bench, has stated a case and referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in canceling the penalty of Rs. 30,000 levied on the assessee under section 271(1)(c) of the Income-tax Act, 1961, for the assessment year 1964-65 ?"

2. The assessee is a firm and assessed as such. The year of account is the one ended with June 30, 1963, and the matter relates to the assessment year 1964-65.

3. On September 6, 1963, the Central Excise authorities conducted a raid under the Gold Control Order of the assessee's shop and also the residences of the partners. The partners were all staying together. At their residence, an amount of Rs. 1,42,000 was found. At the shop a sum of Rs. 76,970 was found. The books of account of the assessee as on September 6, 1963, showed the existence of cash of Rs. 1,37,828.84. Thus, an excess cash of Rs. 81,142 was found at the time of the raid. The explanation of the assessee in regard to this amount was that they were amounts withdrawn in the earlier years and amounts of dowry received on the occasion of the marriage of the partners. It was contended that the amount was with them for the past 8 years. The Income-tax Officer did not accept the explanation. He included the amount of Rs. 81,142 in the computation of the total income under section 69A of the Income-tax Act, 1961. The appeals preferred by the assessee contesting this addition before the Appellate Assistant Commissioner and the Appellate Tribunal failed.

4. In view of the addition made, the Income-tax Officer initiated proceedings under section 271(1)(c) of the Income-tax Act, 1961, and on the ground that minimum penalty impossible would exceed Rs. 1,000, he referred the matter to the Inspecting Assistant Commissioner. He relied upon the assessment made for the year and the same being confirmed by the appellate authorities and as the said amount had been included under section 69A and the explanation give by the assessee was not acceptable, he came to the conclusion that the assessee had concealed the income and, therefore, was liable for penalty under section 271(1)(c). He imposed a penalty of Rs. 30,000.

5. On appeal by the assessee in this behalf, the Appellate Tribunal held that apart from the fact that the addition was made by virtue of the provisions of section 69A of the Income-tax Act, 1961, there was no other material on record to show that the amount represented the income of the assessee for the relevant year and that it had concealed the same. It held that the authorities had failed to discharge the initial burden that was on them and, therefore, the imposition of penalty was untenable and it was accordingly cancelled.

6. It is undisputed and it is clear from the order of the Inspecting Assistant Commissioner that except for the fact that the sum of Rs. 81,142 was included in the computation of the total income by virtue of section 69A, there is no other material to show that the amount was the income of the assessee for the relevant year. The raid by the Central Excise authorities was on September 6, 1963, i.e., after the expiry of the relevant accounting year (ending June 30, 1963), and it is by virtue of the express provision under section 69A that the amount was deemed to be income for the said financial year, viz, 1964-65. It is only on account of the circumstance that the raid was on that particular day, which was within the financial year 1964-65, that the amount came to be assessed as being a "deemed income". If the raid was on a subsequent day which would fall within the next financial year and the said amount had been found, it would have been assessed in that financial year as the "deemed income" of that financial year. Similarly, if the raid was on an earlier day prior to March 31, 1963, the amount would have been included in the assessment for the year within which the date fell. Therefore, it is clear that the amount of Rs. 81,142 was included in the assessment because the raid happened to be within the financial year 1964-65 and merely on that account it does not follow that the amount represented the income of the previous year the assessee for which it was bound to file a return and disclose the amount. Section 271(1)(c) can be invoked if an assessee conceals an income which he was bound to disclose for the relevant assessment year and not in respect of an amount which is included by virtue of section 69A in the assessment for the said assessment year.

7. The Tribunal has held that apart from the fact that the amount was included by virtue of the provisions of section 69A, there was no other material gathered by the Inspecting Assistant Commissioner from which it could be inferred that the amount represented the income of the assessee for the year ending June 30, 1963, and accordingly there was no concealment of income established.

8. On the material on record it is clear that the Tribunal was right in the view it has taken and canceling the penalty. The question is accordingly answered in the affirmative and in favour of the assessee. The assessee shall be entitle to the costs of this reference. Advocate's fee Rs. 250.

9. Question answered in the affirmative