

Punjab-Haryana High Court

Commissioner Of Income-Tax vs Bawa Leather Industries on 15 March, 1995

Author: J L Gupta

Bench: J L Gupta, T Chalapathi

JUDGMENT Jawahar Lal Gupta, J.

1. The Commissioner of Income-tax, Jalandhar, made an application under Section 256(1) of the Income-tax Act, 1961, to the Income-tax Appellate Tribunal, Amritsar, to draw up a statement of the case and to refer the following question to this court' :

"Whether, on the facts and in the circumstances of the case the learned Income-tax Appellate Tribunal is right in law in holding that no penalty under Section 271(1)(c) of the Income-tax Act, 1961, is leviable in this case ?"

2. The Tribunal having dismissed the application, the Commissioner has approached this court through the present petition under Section 256(2) of the Act. He complains that the Tribunal has erred in rejecting the application. Is it so ? A few facts may be noticed.

3. The assessee was supplying goods to Liberty Footwear, Karnal, for export. Liberty Footwear were not only to reimburse the cost of the goods but also the cash assistance, etc., received by them after deducting their share of five per cent. During the accounting period for the assessment year 1981-82, the assessee received cheques and credit notes for a sum of Rs. 1,53,784.30. It received debit notes for an amount of Rs. 38,082.60. However, no advice regarding the nature of remittance was sent by Liberty Footwear. The assessee sent letters dated January 18, 1983, and January 27, 1983, requesting it to supply the details in respect of the remittances. It did not get any response. Consequently, the assessee did not include the aforesaid credit and debit notes in its profit and loss account.

4. During the course of the assessment proceedings, the Income-tax Officer obtained a copy of the account of the assessee in the books of Liberty Footwear, Karnal. On a perusal of this account, it was discovered that the cheques and credit notes related to the cash assistance and were as such income of the assessee. The debit notes had been issued on account of a claim for shortage. Consequently, the Income-tax Officer, vide his letter dated September 28, 1983, required the assessee to explain as to why the credit notes had not been accounted for. The assessee explained that in the absence of requisite information, it was impossible to find out whether the credit notes were in respect of the cost of material or towards cash assistance. It was further pointed out that the benefit had not even been claimed in respect of the debit notes for want of necessary information. The assessee also produced documentary evidence to show that the cheques were sent by Liberty Footwear without specifying the nature of payment. However, in view of the fact that the information had been supplied by the party to the Income-tax Officer, the assessee agreed that the amount, of the three credit notes/cheques, viz., Rs. 1,33,784.30, be added to the income and the amount of debit notes, viz., Rs. 38,082.60 be added to the expenses. Resultantly, the amount Rs. 95,701.70 or Rs. 95,702 was added to the income. The assessing authority made the addition and levied tax. It also initiated penalty proceedings under Section 271(1)(c). A penalty of Rs. 76,065 was imposed. The assessee's

appeal having been dismissed, it filed a second appeal before the Tribunal. On a detailed examination of the entire record, the Tribunal recorded the following conclusions :

- (i) The Income-tax Officer had not questioned the assessee's explanation in respect of the amounts referred to above.
- (ii) The bona fides of the assessee were clear from the fact that it had claimed no benefit in respect of the debit notes of Rs. 37,750.60 and Rs. 332 which were an allowable expenditure.
- (iii) The Assessing Officer had accepted the assessee's explanation that the aforesaid items could not be shown in the income and the necessary expenditure could not be claimed as a deduction as Liberty Footwear had not supplied the necessary copies of the credit/debit notes which could have determined the nature of receipts/expenses.

5. Accordingly, the Tribunal accepted the assessee's claim and held that "on the merits of the case, no penalty is leviable . . ". In view of this conclusion, the Tribunal did not go into the various legal issues raised on behalf of the assessee. It was in this situation that the Commissioner had filed the petition under Section 256(1) of the Act. While considering this application, the Tribunal has observed that the order regarding the levy of penalty was quashed on the ground that "the explanation of the assessee that the non-inclusion of the amounts received from Liberty Footwear in its income was due to the failure of the said concern in supplying the necessary copies of credit/debit notes which could have determined the nature of the receipts/outgoings had been accepted by the Assessing Officer at the time of framing the assessment". The Tribunal had also found that as a matter of fact, "the conduct of the assessee was bona fide . . ". According to the Tribunal, these were pure findings of fact and no question of law arises, which may need to be referred to the High Court.

6. Mr. R.P. Sawhney, learned counsel for the Revenue, has contended before us that the Tribunal has erred in dismissing the application. According to learned counsel, the order of the Tribunal is vitiated as it has considered irrelevant matters and its conclusion regarding the bona fides of the assessee is wholly wrong.

7. Section 256 of the Act enables the Revenue as well as the assessee to invoke the jurisdiction of the High Court for decision of a question of law. The decision of the Appellate Tribunal, on all questions of fact arising in a case, is final. However, so far as questions of law are concerned, Section 256 enables the aggrieved party to seek a reference. The jurisdiction of the High Court is not that of an ordinary civil court nor does the High Court exercise an appellate, revisional or supervisory jurisdiction.

8. It only renders an advice which is binding on the Tribunal In a nutshell, it has been provided that the assessee or the Commissioner can request the Appellate Tribunal to draw up a statement of the case and refer the question of law arising out of its order to the High Court. In case the Tribunal refuses to do so on the ground that no question of law arises, the aggrieved party can approach the High Court under Sub-section (2). In case this court finds that in fact, a question of law arises and

the order passed by the Tribunal under Sub-section (1) is not correct, it can direct the Tribunal to state the case and make a reference. However, the reference can be only in respect of a question of law and not on a question of fact. This is so because the jurisdiction to find facts is exclusively that of the Tribunal. A finding recorded by the Tribunal on an appreciation of evidence would not involve a statable question of law. However, when the determination of the question involves the interpretation of the provisions of a statute or even a deed, document or instrument, a question of law would arise. Even the decision of the Tribunal with regard to the legal effect of the findings of fact can raise a question of law and can be reviewed by this court in a reference. It is also permissible to invoke the jurisdiction of this court when a finding recorded by the Tribunal is perverse and there is no evidence to support it. However, when the Tribunal draws an inference from admissible evidence and its decision is not based on any conjecture, surmises or suspicions, it cannot be said that a question of law arises from the decision of the Tribunal.

9. What is the position in the present case ? The Tribunal has rejected the petitioner's application for filing a statement of the case and making a reference to this court on the ground that the findings recorded by it are pure findings of fact and no question of law is involved. In coming to this conclusion, the Tribunal has noticed that the explanation of the assessee regarding the non-inclusion of the amounts received by it from Liberty Footwear was on account of the failure of the said concern to supply the necessary information regarding the credit/debit notes. It has also noticed the fact that the explanation given by the assessee had been accepted by the Assessing Officer and the bona fides of the assessee were borne out from the fact that it had not claimed deductions in respect of the debit notes as the reasons therefor had not been furnished. It has not been shown that these findings are perverse or that there is no evidence in support thereof. There are no conjectures, surmises or suspicions. These are inferences drawn from admissible evidence on the record of the case. These involve no questions of law which may necessitate a reference for the opinion of this court.

10. Mr. Sawhney was at pains to point out that the Tribunal had erred in holding that the explanation given by the assessee was bona fide. He submitted that the mere fact that the assessee had not claimed the deduction on account of the debit notes, did not prove its bona fides. In fact according to learned counsel, the assessee had still succeeded in concealing an income of Rs. 95,702. Accordingly, counsel submitted that the decision of the Tribunal is wrong.

11. We are unable to accept this contention. The sequence of events, as already noticed, shows that Liberty Footwear had not furnished the requisite information to the assessee in respect of various credit and debit notes in spite of the various requests in that behalf. The information was supplied only when the assessing authority had asked for it. Thereupon, the assessee had immediately agreed to the addition of the amount of Rs. 1,33,784.30 to the income and the deduction of Rs. 38,082.60 on account of the expenses. As a result, the net addition of Rs. 95,701.70 was made to the assessee's income. On a consideration of all these facts, the Tribunal was satisfied that the assessee was not guilty of concealing any income as contemplated under Section 271 of the Income-tax Act, 1961. In such a situation, the order of the Tribunal cannot be said to be wrong or perverse. It was a possible inference on admissible evidence.

12. Mr. Sawhney also submitted that the Tribunal had erred in taking into consideration irrelevant matters. According to learned counsel, the Tribunal had wrongly held that the assessee's explanation had been accepted by the assessing authority. We are unable to accept even this contention. A copy of the order passed by the assessing authority has been produced as annexure P-3. It is no doubt correct that the assessing authority had directed that proceedings under Section 271(1)(c) be also initiated. However, Mr. Sawhney has not been able to show that a clear finding had been recorded that the assessee had concealed his income or that the explanation furnished by him for the non-inclusion of the aforesaid amounts in the statement of income, was mala fide or wrong. Accordingly, even this contention raised by learned counsel cannot be accepted.

13. Learned counsel then referred to the two Division Bench judgments of this court in Rattan Cloth House v. CIT [1967] 65 ITR 465 and Bhag Mal Charanji Lal v. CIT [1987] 163 ITR 354, to contend that the order of the Tribunal is vitiated. In the case of Rattan Cloth House [1967] 65 ITR 465 (P & H), it was found by the Bench that the findings of the Tribunal appeared to be passed on "mere suspicions and surmises". Such is not the position in the present case. In Bhag Mal's case, [1987] 163 ITR 354, it was held that (at page 356) "on the facts found, whether penalty would be exigible or not; would be, at least, a mixed question of law and fact if not a pure question of law". On the facts, the case is clearly distinguishable and learned counsel can derive no advantage therefrom. Learned counsel also relied on the decision in CIT v. Managing Trustee, Jalakhabai Trust [1967] 66 ITR 619 (SC), to contend that while deciding a case under Section 256(2), the High Court is not concerned with the ultimate decision but has only to see whether a question of law arises out of the order of the Tribunal. There is no quarrel with the proposition. However, in the facts and circumstances of this case, we are satisfied that no statable question of law arises on which it may be necessary for this court to exercise its advisory jurisdiction. On the contrary, we are satisfied that this case is covered by the pronouncement of their Lordships of the Supreme Court in CIT v. Mussadilal Ram Bharose [1987] 165 ITR 14, wherein it was held that if the Tribunal is satisfied on relevant and cogent material on record and draws an inference therefrom that the assessee was not guilty of wilful neglect or fraud and that the assessee cannot come within the mischief of Section 271, the conclusion of the Tribunal is one of fact and no question of law would arise,

14. Accordingly, we find no error in the order of the Appellate Tribunal. The petition is, consequently, dismissed in limine.