

Punjab-Haryana High Court

Cit vs Rattan Singh Grewal on 20 July, 2006

Equivalent citations: 2008 304 ITR 75 P H

Bench: A K Goel, R Bindal

ORDER

1. In compliance to the direction given by this Court in I.T.C. No. 79 of 1978, vide order dated 22-8-1988, the following question was referred to this Court for opinion arising out of I.T.A. No. 231/ASR/77-78 for the assessment year 1968-69:

Whether, on the facts and in the circumstances of the case and in view of the provisions contained in Section 271(1)(c) of the Income Tax Act, 1961, and the Explanation thereto, the Appellate Tribunal was right in law in cancelling the penalty imposed on the assessee ?"

2. Briefly, the facts are that the assessee left India in 1955 and was a British National living in England thereafter. For the assessment year in question, the assessee did not file return of income. When it came to the notice of the Income-Tax Officer that the assessee had made certain investments during the assessment year in question, the sources of which could not be explained satisfactorily, a notice under Section 148 of the Income Tax Act, 1961 (for short, the Act) was issued on 21-1-1974. In response to the notice, return was filed on 26-4-1974, showing the income as Nil. The assessment of the assessee was framed at Rs. 32,680 vide order dated 11-9-1974 on account of investments made in properties, besides amount lying in the Bank, for which no satisfactory explanation was there. These additions were upheld by the Income Tax Appellate Tribunal, Amritsar Bench (for short, the Tribunal) vide order dated 14-9-1977, where it was found that the explanations furnished by the assessee to justify the investments made in the properties were not bona fide. Since the assessee had concealed particulars of his income, notice under Section 271(1)(c) of the Act was issued for levy of penalty. Finding the explanation given by the assessee to be totally unjustified, penalty of Rs. 32,680 was levied by the Inspecting Assistant Commissioner of Income Tax vide order dated 7/8-3-1977.

3. in spite of the fact that the Tribunal in quantum proceedings had recorded a categorical finding to the effect that the investments made by the assessee not only remained unexplained but even the explanation furnished by the assessee was found to be false, upheld the additions. Whereas contrary to what was held in quantum proceedings by the Tribunal, by recording a contradictory finding that there was nothing with the revenue to disprove the explanation furnished by the assessee that there were sufficient funds available with the assessee's father for investment, the Tribunal set aside the penalty.

4. We have heard learned Counsel for the parties and have gone through the record.

5. The relevant provisions of Section 271(1)(c) of the Act, as it stood at the relevant time, are extracted below:

Failure to furnish returns, comply with notices, concealment of income, etc.(1) If the assessing officer or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person Failure to furnish returns, comply with notices, concealment of income, etc.(1) If the assessing officer or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person

(a) and (b)**

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty,-

(i) and (ii)**

(iii) in the cases referred to in Clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished.

Explanation. Where the total income returned by any person is less than eighty per cent of the total income (hereinafter in, this Explanation referred to as the correct income) as assessed under Section 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) of this sub-section.

Explanation. Where the total income returned by any person is less than eighty per cent of the total income (hereinafter in, this Explanation referred to as the correct income) as assessed under Section 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) of this sub-section.

6. From a perusal of the order passed by the Tribunal in quantum proceedings, it is quite clear that categorical finding was recorded that the explanations furnished by the assessee were false by rejecting various pleas raised by the assessee including those which were not raised before the authorities below at the time of framing the assessment, which even run contrary to his earlier pleas. During the assessment proceedings, the assessee contended that he had purchased a plot at Sarabha Nagar, Ludhiana. However, during the proceedings before the Tribunal in appeal, the plea raised was that the assessee constitutes a joint Hindu family with his father and other members and in case any investment remains unexplained, the same should be added in the hands of HUF Another plea, which was found to be false on the basis of evidence on record, was that the assessee took a loan of

Rs. 18,000 from his father-in-law Shri Kartar Singh, whose affidavit was also placed on record, in terms of which the loan was advanced by Shri Kartar Singh to the assessee out of his agricultural income. On examination of Shri Kartar Singh by the Income Tax Officer, it was revealed that his annual income was merely Rs. 10,000 to Rs. 12,000. Shri Kartar Singh had a large family to support and nothing was brought on record by the assessee or Shri Kartar Singh to support the plea that as against the annual income of Rs. 12,000, how a loan of Rs. 18,000 was advanced to the assessee.

7. Keeping the above facts in view and also that the assessee did not file his return at the first instance, even in response to notice under Section 148 of the Act, return declaring nil income was filed. Further when confronted with certain investments made by the assessee, his explanations were found to be false. The findings recorded in quantum proceedings cannot be brushed aside in the manner it has been done in the present case. In our view, in such circumstances, the assessee had not been able to discharge the onus put on him in terms of Explanation to Section 271(1)(c) of the Act. It is a clear case where the assessee had concealed the particulars of his income. In such a situation, the penalty was rightly levied on the assessee.

8. In view of our above discussion, we answer the question in negative, i.e., in favour of the revenue and against the assessee and hold that the Tribunal was not right in cancelling the penalty imposed on the assessee.