Supreme Court of India
Addl. Commissioner Of ... vs Chandravilas Hotel on 1 August, 1977
Equivalent citations: AIR 1977 SC 2011, 1978 115 ITR 118 SC
Author: Y Chandrachud
Bench: P Kailasam, Y Chandrachud
JUDGMENT Y.V. Chandrachud, J.

1 The respondent in these two appeals is a registered firm constituted by two brothers and their sons. It runs a Restaurant called 'Chandravilas Hotel' in Ahmedabad. For the assessment year 1967-68 it filed a return on September 2, 1967, disclosing an income of Rs. 34,131. It was however, assessed for that year on a total income of Rs. 1,65,422. For the assessment year 1968-49, it returned an income of Rupees 68,841 but was assessed on a total income of Rs. 2,80,457. The two assessment years are the subject-matter, respectively, of these two appeals.

2. Since the income returned by the respondent was less than 80 per cent of the income which was assessed, the In come-tax Officer, taking the view that the respondent had concealed the particulars of its income, initiated penal proceedings under Section 271(1)(c) of the Income-tax Act, 1961. As the minimum penalty exceeded Rs. 1,000, the I.T.O. referred the matter to the Inspecting Assistant Commissioner under Section 274 of the Act.

3. After considering the facts noted by the I.T.O. in his assessment orders and after hearing the respondent, the Inspecting Assistant Commissioner passed an order on. November 13, 1969 levying a penalty of Rs. 20,000 on the respondent in respect of the return filed for the assessment year 1967-68. A similar order was passed on December 9, 1970 levying a penalty of Rs. 2,12,000 for the assessment year 1968-69.

4. The respondent then preferred appeals to the Income-tax Appellate Tribunal, which, by its judgments of March 18 and March 20, 1972, set aside the orders of penalty.

5. The Additional Commissioner of Income-tax. Ahmedabad, the appellant before us, filed applications under Section 256(1) of the Act, asking the Appellate Tribunal to refer certain questions for the opinion of the High Court. Those applications having been rejected by the Tribunal on the ground that no question of law arose out of its judgments, the appellant approached the High Court with a similar prayer. The High Court reject ed the applications of the appellant summarily against which the appellant has filed these appeals by special leave.

6. Having heard learned Counsel for both the sides at some length, we find It difficult to agree with the Tribunal that none of the four or five questions, on which a reference was sought by the appellant, arise out of its judgments in the two cases. We would have liked to explain fully why we are unable to agree with the reasoning of the Tribunal, but any elaboration of the matter here is likely to prejudice the rights and contentions of the parties in the two appeals. It is, therefore, desirable, a course to which counsel have no objection, that if we are disposed to set aside the orders of the High Court and the Tribunal, we do so by a brief order.

7. Accordingly, we direct that the High Court shall call for a statement of case from the Tribunal in each of the two cases on the following questions:

(1) Whether on the facts and in the circumstances of the case, the finding of the Tribunal that the assessee was not guilty of any fraud or gross or wilful neglect in returning the income, which resulted in the income being returned at a figure lower than 80 per cent of the income assessed, is contrary to the weight of the record and was arrived at without considering the entire evidence and material on the record?

(2) 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 Tribunal was right in law in canceling the penalty imposed on the assessee?

8. After receiving the statements from the Tribunal, the High Court shall dispose of the references in accordance with law.

9. There will be no order as to costs.