

*** HONOURABLE SRI JUSTICE L. NARASIMHA REDDY**

AND

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

-

-

+ I.T.T.A. No.282 OF 2003

-

% 11-11-2014

Between:

The Commissioner of Income Tax,
Vijayawada.

...Appellant

And

\$ M/s. Lotus Constructions,
38-8-60, Opp.PWD Grounds,
Bandar Road, Vijayawada.

...Respondent

! Counsel for the Appellant : Sri J. V. Prasad

^ Counsel for the Respondent : Sri Y. Ratnakar

< Gist:

> Head Note:

? Cases referred : [2010] 322 ITR 158 (SC)
[2012] 349 IT 196 (AP)
[2009] 306 IT 277 (SC)
[2013] 358 ITR 593 (SC)

HONOURABLE SRI JUSTICE L. NARASIMHA REDDY

AND

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

-

-

I.T.T.A. No.282 OF 2003

-

JUDGMENT: (Per Hon'ble Sri Justice L. Narasimha Reddy)

This case presents an occasion to deal with certain important aspects in the context of initiation of proceedings under Section 271 (c) of the Income Tax Act (for short 'the Act').

2. The respondent is an assessee involved in the activity of construction. For the assessment year 1995-1996, the returns were submitted on 30.10.1995 showing an income of Rs.2,40,180/-. Before the order of assessment was passed, a survey was conducted under Section 143A of the Act on 08.12.1995. One of the aspects noticed during the course of survey was that the respondent submitted an application to the Life Insurance Corporation in the year 1993 for sanction of loan and had projected the income through the activity of construction, at Rs.23.68 lakhs for three financial years between 1993 and 1995. However, the income for three financial years was shown only at Rs.16,03,364/- in the respective returns. An order of assessment was passed by the Assessing Officer on 15.03.1996 taking the total income at Rs.10,08,200/-. The same has become final and income tax imposed thereon was paid.

3. The Assessing Officer initiated penalty proceedings under Section 271(c) of the Act against the respondent. On receipt of the show cause notice, the respondent submitted an explanation. It was mentioned that in the course of survey, certain additions were accepted with a view to purchase peace and that in the order of assessment, no mention was made about initiation of proceedings under Section 271 (c) of the Act. The explanation was not accepted and the Assessing Officer passed an order,

dated 30.09.1996, imposing penalty of Rs.3,04,000/-. The respondent carried the matter in an appeal before the Commissioner of Appeals. The appeal was allowed through order, dated 27.01.1997. Aggrieved by that, the Department filed ITA No.620/H/1997, before the Visakhapatnam Bench of the Income Tax Appellate Tribunal. The appeal was dismissed on 10.10.2002. Hence, this further appeal under Section 260-A of the Act, by the Revenue.

4. Sri J.V. Prasad, learned Standing Counsel for the appellant, submits that the Commissioner as well as the Tribunal took the view that a) if the facts and figures noticed during the course of survey are accepted by the assessee, no occasion would arise for levying penalty and b) the absence of an endorsement or observation in the order of assessment for initiation of proceedings under Section 271 (c) of the Act would disable the Assessing Officer from taking any steps in that direction; is contrary to law as laid down by the Supreme Court in ***Commissioner of Income-Tax v. Reliance Petroproducts Pvt.Ltd.***^[1] and other decisions rendered earlier thereto. It is also pleaded that the mere fact that an assessee stated that he paid the tax or accepted the figures to purchase peace, does not absolve him from the liability to be levied penalty and that the orders passed by the Commissioner and Tribunal cannot be sustained in law.

5. Sri Y. Ratnakar, learned Senior Counsel, on the other hand submits that the very basis for conducting survey was the discrepancy between the figures projected in the loan application filed by the respondent, on the one hand and the actual income derived for the corresponding period, on the other hand. He submits that the basis for adding the income was the absence of vouchers for sundry purchases such as sand and other construction material, and with a view to avoid further complication in the matter, the figure suggested by the Assessing Officer was accepted. He submits that assuming that the acceptance of such figures and payment of tax can be treated as suppression or furnishing of incorrect information, the initiation of proceedings under Section 271 (c) of the Act was untenable, since the Assessing Officer did

not record any satisfaction in the order of Assessment as to initiation of proceedings under that provision. He submits that the language employed in sub-Section (1) (b) of Section 271 leaves no doubt at all in this behalf. He placed reliance upon the judgment of this Court in ***Chennakesava Pharmaceuticals v. Commissioner of Income-Tax***^[2].

6. The levy of penalty is one of the deterrents provided for under the Act, to ensure that no assessee furnishes incorrect and wrong information or facts and figures in the returns. If it is noticed that an assessee has furnished incorrect information or figures, not only the tax would be levied on the income ascertained after verification, but also penalty can be levied under Section 271 (c) of the Act. The relevant parts of Section 271 reads as under:

“**271:** (1) If the Assessing Officer or the Commissioner (Appeals) is satisfied that any person—

(a)

(b) has failed to comply with a notice under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142, or

(c) has concealed the particulars of his income or furnished inaccurate particulars or such income, or

(d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,

he may direct that such person shall pay by way of penalty,—

(i)

(ii) In the cases referred to in clause (b), in addition to tax, if any payable by him, a sum of the thousand rupees for each such failure;

(iii) In the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.”

(1B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (c).”

7. Obviously because, steps taken under Section 271 of the Act visit an assessee with penal consequences, Courts insist that the department must establish an element of deliberate step on the part of the

assessee as to concealment of the information or furnishing of incorrect facts as distinguished from an inadvertent omission or a honest misunderstanding of law. It is to be noted that the department need not establish *mens rea* on the part of the assessee. Sub-Section (1B) was inserted in Section 271 of the Act, to the effect that it is not necessary that the Assessing Officer must record reasons. That would take away the necessity in indicate *mens rea*.

8. In ***Union of India and Others v. Dharmendra Textiles Processors and others***^[3], the Supreme Court held that it is not necessary to establish *mens rea* on the part of an assessee in the context of levying penalty.

9. Though extensive arguments are advanced as to the absence of *mens rea* or deliberate intention on the part of the assessee in furnishing certain facts and figures and acceptance of those indicated during the survey, we are not inclined to deal with the same; particularly when this is not the Forum or the stage. The principal contention is about the legality of the proceedings initiated under Section 271 (c) of the Act.

10. The endeavor is only to demonstrate that otherwise innocent mentioning of figures, which were not accepted by the Assessing Officer, cannot be treated as an act of concealment or furnishing of inaccurate particulars. From the point of view of the assessee, the particulars may be accurate. If the Assessing Officer did not believe the same, an assessee has two options before him. The first is to make an attempt to convince the Assessing Officer by placing relevant material. The second is to accept view point of the Assessing Officer, to terminate the proceedings at the earliest. Even that aspect does not detain us further in the instant case.

11. One of the important grounds that appealed to the Commissioner as well as the Tribunal was that there was no endorsement in the order of assessment, dated 30.09.1996, to the effect that the penalty proceedings under Section 271 (c) of the Act would be initiated. The effect of failure to mention that was discussed with reference to the decided

cases and the very provision of law.

12. Basically Section 271(1) itself indicates that the satisfaction or decision to initiate proceedings must arise in the course of the proceedings. Added to that, sub-Section (1) (b) of Section 271 of the Act mandates that the intention or satisfaction to initiate proceedings must be evident from the order of assessment itself, meaning thereby that such satisfaction need not be supported with other reasons. In ***Chennakesava's case (supra 2)***, this Court held that absence of any mention in the order of assessment that proceedings under Section 271 (c) would be initiated makes the initiation of such proceedings, untenable.

13. Heavy reliance is placed upon a recent judgment of the Supreme Court in ***Mak Data P. Ltd. v. Commissioner of Income-Tax***^[4]. A perusal of the same discloses that the assessee was not complaining of absence of such endorsement. He was insisting that the satisfaction was not to the effect that there was concealment of income or furnishing of inaccurate information. The relevant portion reads as follows:

“The Department initiated penalty proceedings for concealment of income and not furnishing true particulars of its income under section 271(1)(c) of the Incometax Act. During the course of the hearing, the assessee contended that penalty proceedings are not maintainable on the ground that the Assessing Officer had not recorded his satisfaction to the effect that there has been concealment of income/furnishing of inaccurate particulars of income by the assessee and that the surrender of income was a conditional surrender before any investigation in the matter.”

14. Their lordships extracted the text of endorsement made by the Assessing Officer to the effect that he is satisfied for initiation of proceedings under Section 271(c) of the Act. It was pointed out that such satisfaction need not be in any particular form. The relevant portion reads as under:

“The Assessing Officer, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under section 271 read with section 274 of the Income-tax Act, 1961.

The Assessing Officer has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the Assessing Officer is not required to record his satisfaction in a particular manner or reduce it into writing.”

15. Much emphasis is laid on the last words *viz.*, “or reduce it into writing” and asserted that the satisfaction need not be in writing at all. However, they must be read in the context of entire sentence, and not in isolation. If so done, the conclusion would be that the nature of satisfaction need not be in writing, though the factum of satisfaction must be in writing. The Tribunal has taken the correct view of the matter and we are not inclined to interfere with the same.

16. Hence, the I.T.T.A. is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, shall stand closed.

L. NARASIMHA REDDY, J

CHALLA KODANDA RAM, J

November 11, 2014.

Note:

L.R. copy to be marked.

B/O.

KTL

[\[1\]](#) [2010] 322 ITR 158 (SC)

[\[2\]](#) [2012] 349 IT 196 (AP)

[\[3\]](#) [2009] 306 IT 277 (SC)

[\[4\]](#) [2013 358 ITR 593 (SC)