

*** THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ I.T.T.A.No.190 of 2003

%Date:21.10.2014

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The Commissioner of Income Tax, Vijayawada.

...appellant.

and

\$M/s.Chennupati Tyre & Rubber Products, Vijayawada.

...Respondent.

! Counsel for appellant: Sri J.V.Prasad

^ Counsel for Respondent : Sri A.V.Krishna Kaundinya

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? Cases referred

1. 168 ITR 705

2. 358 ITR 593

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A.No.190 of 2003

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

The respondent is an assessee under the Income Tax Act, 1961 (for short 'the Act'). It filed returns for the assessment year 1994-95, showing loss of Rs.4,51,475/-.

The Assessing Officer processed the return under Section 143(1)(a) of the Act, and an intimation was sent to the respondent mentioning the loss at Rs.4,04,106/-. The respondent filed an application under Section 154 of the Act, with a request to rectify the order and the same was acceded to on 09.11.1995.

The Assessing Officer has taken up an exercise under Section 143(2) of the Act, in respect of the same returns. During the course of verification, he doubted the correctness of the two sundry credits, being Rs.5,67,840/- and 5,60,160/-, said to be from Super Tyre Retreads and Andhra Rubber Factory. The explanation offered by the respondent was not found to be satisfactory by the Assessing Officer. Thereupon, the respondent agreed for treating those two amounts as income. Accordingly, the order of assessment was passed and tax was paid.

The Assessing Officer initiated proceedings under Section 271(1)(c) of the Act, proposing to levy penalty, referable to those two amounts. The respondent submitted explanation, stating that he did not have any intention to conceal the amounts, and on the other hand, those two amounts were carried forward from the previous assessment year. The explanation was not accepted and through his order, dated 30.08.1996, the Assessing Officer levied penalty. Aggrieved by that, the respondent filed an appeal before the Commissioner of Income Tax (Appeals). The appeal was allowed on 12.11.1996, taking the view that there was no intention on the part of the appellant to hide the income. The department filed I.T.A.No.205/H/1997, before the Visakhapatnam Bench of the Income Tax Appellate Tribunal. The appeal was dismissed through order, dated 12.04.2002. Hence, this further appeal under Section 260A of the Act.

Heard Sri J.V.Prasad, learned counsel for the appellant, and
Sri A.V.Krishna Kaundinya, learned counsel for the respondent.

The processing of a return submitted by an assessee is a complicated exercise. More the sources of income from an assessee, higher the amount of scrutiny, that is needed. Even after taking the help of the Chartered Accountant, an assessee may not be correct in his understanding as to the scope of (a) the determination of the total income, and (b) the deductions, which he is otherwise entitled to. The interpretation placed on the respective provisions, itself is not absolute or final. The Courts and the Tribunals are not uniform in their interpretation

of the relevant provisions. Obviously, to provide a deterrence to the assessee, the Parliament added Section 271 of the Act, providing for levy of penalty, in case an assessee is found to have suppressed, or concealed income, or posted the incorrect facts. Till it was amended in the year 1964, Section 271(1)(c) of the Act, brought only “deliberate” concealment, or furnishing of inaccurate particulars as the basis for levy of penalty. Through the Finance Act, 1964, the word “deliberately” was omitted. Such omission, no doubt, has added new dimensions to the provision. All the same, the revenue has to discharge its burden to prove that there was some intention to conceal or furnish inaccurate particulars on the part of the assessee before penalty is levied. In other words, an inadvertent mistake, or a *bona fide* belief, as to the classification, or character of an amount, cannot *per se* provide a ground for levy of penalty. In the ultimate analysis, the sovereign power of the State is only to levy tax, and imposition of penalty is not a principal activity, but a step in the process of collection thereof.

As observed at the threshold, the respondent filed a return, showing the loss of Rs.4,51,475/- for the assessment year 1994-95. When an intimation was given under Section 143(1)(a) of the Act reducing the loss to Rs.4,04,106/-, the respondent filed an application for rectification thereof and that appealed to the Assessing Officer. It is thereafter that an excise under Section 143(2) of the Act was undertaken and the scrutiny of each and every item was made. In respect of two items of sundry credits, the explanation offered by the respondent was not found satisfactory. Naturally, he too agreed for treating those two items as income and it paid tax.

It is, no doubt, true that in the order of assessment itself, the Assessing Officer made an observation that proceedings under Section 271 of the Act would be initiated. In the explanation submitted to the show cause notice, the respondent stated the reasons on account of which, it agreed to treat those two sundry creditors as income. According to them, it was almost a measure of purchasing peace. The worries of the respondent are evident from the fact that it has posted losses. Lack of any *mala fide* intention on the part of the respondent is clear from the fact that those two items were carried forward from the previous year and were not new additions at all. The Commissioner has verified the record in detail and found that there did not exist any occasion, or basis for levy of penalty. Same view was expressed by the Tribunal.

It is, no doubt, true that the Tribunal made a reference to the judgment of the Supreme Court in **Sir Shadilal Sugar and General Mills Ltd. V. Commissioner of Income Tax**, which, in turn, was rendered with reference to the provisions as they stood, before Section 271(c) of the Act, was amended. It is not as if the Commissioner and Tribunal proceeded on the assumption that there was no “deliberate” attempt on the part of the respondent to conceal the two items. The removal of the word “deliberate” did not give a free hand to the Assessing Officer or exposing the assessee to a defenceless situation. The principle that runs cutting across any systems of law is that before person is visited with punishment or penalty, the wrongful act on his part must be established. If not a deliberate intention, at least, ‘intention’, as such, must be proved to be existing. The intention of this nature may not be equated to the concept of *mens rea*. At the same time, the minimum contrast with an instance of mere omission, or failure must be made. Otherwise, every inadvertent omission, or a *bona fide* understanding of a particular provision, which is not accepted by the Income Tax Officer may expose the assessee to penalty. If that time is pursued, Act may turn out to be the one of the collection of penalties than the income tax.

Recently, in I.T.T.A.No.180 of 2003, we observed as under:

“The levy of penalty cannot be resorted to as a matter of course. By their very nature, the returns are bound to be at variance from what is contemplated under the Act or the estimates of the Assessing Officers. Many a time, the understanding of a given provision in a particular way, itself would lead to a considerable difference as to the income or the corresponding tax. The very fact that quite large number of remedies in the form of appeals at various stages is provided for, discloses that even the understanding of the assessing or adjudicatory authorities; not absolute. The levy of penalty is not going to leave the matter at that. It would expose the assessee to prosecution also by treating him as an economic offender. An assessee can be made to suffer such far reaching consequences, if only facts of the case support, and it emerges that the assessee had a clear intention to suppress the income.”

Learned counsel for the appellant placed reliance upon the judgment of the Supreme Court in **Mak Data P. Ltd. v. Commissioner of Income Tax**. Their Lordships held that once an item of income was found to have been concealed, the mere fact that the assessee has voluntarily disclosed it thereafter, does not absolve him from being proceeded under Section 271(1)(c) of the Act. We respectfully follow

that. However, it is important to understand the purport of very word “concealment”. That can occur, only when the person is in full knowledge of the state of affairs and even while being under obligation to make it known to others, and in particular the authorities under the Act fails or refuses to do so. It is then, and only then, that he can be said to have ‘concealed’ and once the factum of concealment is proved, his attempt to voluntarily disclose it does not save him. In the instant case, we do not find any ingredients of “concealment”.

We do not find any basis to interfere with the order passed by the Tribunal. The appeal is accordingly dismissed. There shall be no order as to costs.

The miscellaneous petition filed in this appeal shall also stand disposed of.

L.NARASIMHA REDDY, J.

CHALLA KODANDA RAM, J.

Date:21.10.2014

L.R. copy to be marked.

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