Commissioner of Income-tax Vs. Shri Krishandas Agarwal and ors.

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Court : Madhya Pradesh

Decided On : Aug-23-1979

Reported in : [1983]143ITR798(MP)

Judge : G.P. Singh, C.J. and ;C.P. Sen, J.

Acts : Income Tax Act, 1961 - Sections 271 and 271(1)

Appeal No. : Miscellaneous Civil Case No. 524 of 1973

Appellant : Commissioner of Income-tax

Respondent : Shri Krishandas Agarwal and ors.

Advocate for Def. : B.L. Nema, Adv.

Advocate for Pet/Ap. : P.S. Khirwadkar, Adv.

Judgement :

G.P. Singh, C.J.

1. This is a reference made by the Income-tax Appellate Tribunal referring for our answer the following question of law:

' Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty levied under Section 271(1)(a) on the ground that the firm in which the assessee is a partner has already been penalised for identical default and the default committed by the assessee is coextensive with the default committed by the firm '

2. The relevant assessment year is 1963-64. The returns were due on 30th June, 1963. The returns were filed on 30th December, 1963, by the partners. The ITO found that the forms were not available till 10th August, 1963, but thereafter there was no justification for not filing the returns. Penalty was, therefore, imposed on the partners under Section 271(1)(a) of the I.T. Act, 1961. In appeal, the AAC came to the conclusion that the returns ought to have been filed within 35 days from the receipt of the forms, i.e., on 15th September, 1963. The penalty was, therefore, reduced. The Tribunal, however, cancelled the penalty for the following reasons :

' 3. The only income of the assessee is by way of share income from firms and it is obvious that the assessee could not have filed his return of income unless such shares of income could be ascertained from the firms. No doubt, the assessee, as a partner of the firm, might also be partly responsible for the delay on the part of the firm in

completing its accounts and filing its returns. However, for such delay, the firm itself has been subjected to penalty under Section 271(1)(a) and, under the provisions of Section 271(2) it has been treated as an unregistered firm for the purpose of levying such penalty. The default committed by the assessee is coextensive with the default committed by the firm. While levying penalty on the firm, the benefit of registration has been ignored under the provisions of Section 271(2) and the separate assessment on the partners has also been ignored by treating the firm as an unregistered firm. Considering that the default committed by the assessee is only an offshoot of the default committed by the firm itself and is not referable to any default individually committed by the assessee, we are of the view that, in the circumstances of the case, a separate penalty on the assesses is not justified. The position might be different if the assessee had separate source of income, apart from share income from the firm. However, as that is not the position in the case before us, we do not wish to express any opinion thereon. On the basis of the facts and circumstances obtaining in the case before us, we are of the view that the imposition of the impugned penalty was not justified. We would accordingly cancel the penalty and allow this appeal. '

3. Although the order of the Tribunal is not very clear, yet it appears to us that the Tribunal intended to exercise its discretion not to impose penalty under Section 271(1)(a) of the Act on the partners. The Tribunal, in our opinion, did not hold that the partners were not liable for penalty. The Tribunal, on the facts and in the circumstances of the case, found that this was not a fit case for an imposition of penalty. That seems to be the purport of the order of the Tribunal. The Tribunal noticed the facts that the only income of the partners was by way of share income from the firm, the firm had been penalised for delay in filing the returns and the penalty had been imposed on the footing that the firm was unregistered. Now, it cannot be disputed that under Section 271 of the Act the I.T. authorities have a discretion to impose or not to impose penalty. If it is found that there is only a technical or venial breach of the law or that it would be unjust to impose penalty, the authorities may exercise their discretion in favour of the assessee by not imposing penalty.

4. The learned 'counsel for the Department relied upon the case of Amritlal Somabhai v. CIT : [1979]116ITR833(MP) , in which it was held by this court that a firm and its partners are two distinct entities for the purpose of income-tax and that a firm and its partners can both be penalised for late filing of returns under Section 271(1)(a). There is no dispute about this legal proposition. The discretion not to impose penalty is exercised when penalty is imposable. It is on this footing that the authorities in a proper case can exercise their discretion in favour of the assessee by not imposing the penalty. In the instant case, a reading of the order of the Tribunal does not go to show that the Tribunal held that no penalty could be imposed on the partners of the firm. The Tribunal, in our opinion, in the exercise of its discretion, did not impose penalty having regard to the facts and circumstances of this case. In doing so, it cannot be said that the Tribunal did not act in accordance with law or exceeded its jurisdiction. In this connection, we may refer to a recent decision of this court in Addl. CIT v. Chokkelal Sharda Prasad (Miscellaneous Civil Case No. 221 of 1973, decided on 20th August, 1979) (see p. 801 Appx., infra).

5. Our answer to the question referred is as follows :

The Tribunal acted within its lawful discretion in cancelling the penalty.

6. There shall be no order as to costs of this reference.