

Jawahar Woollen Textile Mills Vs. Commissioner of Income-tax (Central)

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Court : Punjab and Haryana

Decided On : Jan-17-1972

Reported in : [1973]92ITR510(P& H)

Judge : D.K. Mahajan and; Prem Chand Jain, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 271(1) and 274(2)

Appeal No. : Income-tax Reference No. 35 of 1971

Appellant : Jawahar Woollen Textile Mills

Respondent : Commissioner of Income-tax (Central)

Advocate for Def. : D.N. Awasthy and; B.S. Gupta, Advs.

Advocate for Pet/Ap. : Bal Raj Kohli and; Ram Rang, Advs.

Judgement :

1. The only question in this reference relates to whether the penalty has been rightly imposed under Section 271(1)(c) read with Section 274(2) of the Income-tax Act, 1961.

2. The assessment year in question is 1964-65. The assessee in his books of accounts had shown that two amounts of Rs. 20,000 and Rs. 25,000 had been borrowed by him on 7th April, 1964, and 10th of April, 1964, respectively, from one Mohan Dass. During the assessment proceedings, the assessee produced a copy of the accounts of Mohan Dass. Mohan Dass was also produced and also the pronotes. Mohan Dass went to the length of stating that he had advanced the amounts. However, the Income-tax Officer got suspicious because the copy of the accounts produced was undated. This led the Income-tax Officer to ask the assessee to give further evidence in regard to the genuineness of the deposits. The Income-tax Officer being not satisfied, he required the production of Mohan Dass who appeared before him on 28th July, 1966. Mohan Dass was asked to appear with his account books. But he did not do so. His plea was that the account books had been lost in September, 1965, when his wife had gone to Bombay along with the books of accounts, The Income-tax Officer proceeded to cross-examine Mohan Dass and during the course of cross-examination Mohan Dass stated that no complaint had been lodged by him with the police regarding the loss of the account books. It was also discovered that Mohan Dass had only returned an income of Rs. 4,000 odd during the assessment years 1961-62, 1962-63 and 1963-64, and not declared any income from money-lending business. This led to the inference at which the Income-tax Officer arrived that Mohan Dass had not advanced any amounts to the assessee. In addition to this, two statements were made by Mohan

Dass, one on the 29th of December, 1965, and the other on the 15th of January, 1966, in two independent income-tax cases wherein he had stated that he was not carrying on the business of money-lending, but was merely lending his name as a creditor on payment of 3 per cent. commission. Taking all these facts into account, the Income-tax Officer came to the conclusion that the amount of Rs. 45,000 shown as advance by Mohan Dass in the books of the assessee was a bogus entry and was in fact income from undisclosed sources. This amount of Rs. 45,000 was thus added to the income of the assessee and was brought to tax.

3. The assessee's appeal with regard to this assessment to the Appellate Assistant Commissioner and a further appeal to the Appellate Tribunal met with no success.

4. Simultaneously with the assessment, penalty proceedings were started by the Income-tax Officer and they were processed by the Inspecting Assistant Commissioner of Income-tax who came to the conclusion that the assessee had deliberately concealed his income and, therefore, on that basis imposed a penalty of Rs. 27,037. An appeal against this order to the Tribunal met with no success.

5. The assessee has not challenged the assessment by way of a reference to this court. He has only claimed reference with regard to the matter of penalty and the Tribunal has referred the following question of law for our opinion:

'Whether, on the facts and in the circumstances of the case, penalty under Section 271(1)(c) read with Section 274(2) of the Income-tax Act, 1961, was exigible?'

6. The short contention advanced by the learned counsel for the assessee before us is that his case is covered by the decision of the Supreme Court in *Commissioner of Income-tax v. Anwar Ali*, [1970] 76 I.T.R. 696; [1971] 1 S.C.R. 446 (S.C.). The burden of his argument is that, barring the explanation of the assessee, there is no material on the record from which the Tribunal or the Inspecting Assistant Commissioner could come to a finding that there was concealment of income so as to attract the provisions of Section 271(1)(c) of the Act. The argument is further highlighted with the contention that penalty proceedings are of a quasi-criminal nature and, therefore, the onus of proof that there has been deliberate concealment of income is on the department. Therefore, there must be evidence on the basis of which it can be concluded that there is concealment of income or deliberate concealment of income.

7. We have referred to the decision of the Supreme Court in *Anwar Ali's* case. That was a case where, besides the explanation of the assessee, there was no material whatever on the record to justify a conclusion that there was any evidence of concealment of income or deliberate concealment of income. The Income-tax Officer had merely rejected the explanation offered. In the present case, there is no question of the Income-tax Officer rejecting the explanation offered. The Income-tax Officer went further and tried to ascertain from all available sources whether the amount in question was the income of the assessee or not and whether it had been concealed or not. The so-called creditor was examined. Effort was made to obtain the books which, in the circumstances of the case, were deliberately withheld. The conduct of the so-called creditor has been that he is lending his name to different debtors as a creditor in order to enable them to escape liability to income-tax. In this situation, it is a far cry to say that there is no material on the record on the basis of which the Income-tax Officer and, as a matter of that, the Inspecting Assistant Commissioner and the Tribunal could not come to a finding that there was concealment of income.

This being so, it must be held that the decision in Anwar Ali's case does not help the contention of the learned counsel for the assessee.

8. For the reasons recorded above, we answer the question referred to us in the affirmative, i.e., in favour of the department and against the assessee. The department will have its costs which are assessed at Rs. 250.

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