

Rajputana Stores Vs. Inspecting Assistant Commissioner of Income-tax and ors.

Rajputana Stores Vs. Inspecting Assistant Commissioner of Income-tax and ors.

SooperKanoon Citation : sooperkanoon.com/120863

Court : Guwahati

Decided On : May-25-1973

Judge : R.S. Bindra and Baharul Islam, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 271 and 271(1); [Constitution of India](#) - Article 14

Appeal No. : Civil Rule No. 36 of 1967

Appellant : Rajputana Stores

Respondent : inspecting Assistant Commissioner of Income-tax and ors.

Advocate for Def. : S.K. Ghose, J.P. Bhattacharjee and S.N. Medhi, Advs.

Advocate for Pet/Ap. : S.M. Lahiri, D. Sarma and S.K. Sen, Advs.

Prior history : Bindra, J. 1. This writ petition under Article 226 of the Constitution of India by Messrs. Rajputana Stores, Jorhat, a partnership firm, is directed against the order dated September 2, 1966, of the Inspecting Assistant Commissioner of Income-tax, Dibrugarh Range, Dibrugarh imposing on the petitioner a penalty of Rs. 10,000, under Section 271 of the Income-tax Act, 1961, briefly called 'the Act' hereafter. For the year 1964-65 the petitioner submitted a return of its income on October

Judgement :

Bindra, J.

1. This writ petition under Article 226 of the [Constitution of India](#) by Messrs. Rajputana Stores, Jorhat, a partnership firm, is directed against the order dated September 2, 1966, of the Inspecting Assistant Commissioner of Income-tax, Dibrugarh Range, Dibrugarh

imposing on the petitioner a penalty of Rs. 10,000, under Section 271 of the Income-tax Act, 1961, briefly called 'the Act' hereafter. For the year 1964-65 the petitioner submitted a return of its income on October 21, 1964, showing its total income at Rs. 28,270. The Income-tax Officer, however, assessed the income of the petitioner at Rs. 47,273 for that year. The appeal taken by the petitioner against the order of the Income-tax Officer to the Appellate Assistant Commissioner having proved abortive it has now gone in second appeal to the Income-tax Appellate Tribunal. That appeal is still pending decision. After the first appeal of the petitioner had been dismissed, penalty proceedings were initiated against it by the Income-tax Officer, Jorhat, in terms of Clause (c) of Section 271(1) of the Act. The penalty proceedings had, however, to be referred by that Income-tax Officer to the Inspecting Assistant Commissioner, Dibrugarh, inasmuch as he found that the penalty payable shall exceed Rs. 1,000, which was beyond his jurisdiction. The Inspecting Assistant Commissioner ultimately imposed a penalty of Rs. 10,000 on the petitioner by his order dated September 2, 1966, and it is the validity of that order which is challenged before us in the petition.

2. Two points have been urged by Sri Sen on behalf of the petitioner in support of the contention that the penalty proceedings are vitiated, being invalid, and to support the prayer that the penalty of Rs. 10,000 should be quashed. They are, firstly, that the penalty having been imposed by the aid of the Explanation appended to Sub-section (1) of Section 271, which Explanation had come into force with effect from April 1, 1964, the Explanation did not apply as the return in question related to the year which had concluded on March 31, 1964, and, secondly, that the Explanation offends Article 14 of the Constitution. We shall

examine the two contentions in the order they are stated.

3. The Explanation was added by the Finance Act, 1964, and it became operative, as stated earlier, on April 1, 1964. The Explanation reads as under :

' Where the total income returned by any person is less than eighty per cent. of the total income (hereinafter in this Explanation referred to as the correct income) as assessed under Section 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) of this sub-section.-

On its plain wording, the explanation applies to the income returned by an assessee after it came into force irrespective of the fact whether the income related to a period prior to April 1, 1964, or thereafter. The penalty Clause (c) can be invoked only if a false return is filed, and if the return is filed after the Explanation had become operative, surely such return, if it offends the Explanation, would attract its applicability. Therefore, we have no doubt on the point that the Explanation applies to the case in hand since the relevant return was admittedly filed after April 1, 1964. This interpretation does not tantamount to operation of the Explanation retrospectively as contended.

4. This takes us to the consideration of the question whether the Explanation is obnoxious to the provisions of Article 14 which lays down that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The argument raised by Sri Sen is that since the Explanation created two classes of assesseees and since there is no rational differentia for creation of those classes, the Explanation cannot stand the test on the touchstone of Article 14. True, it cannot be gainsaid that the Explanation does create two classes ; one class of those assesseees whose returned income happens to be less than 80% of the assessed income, which we may appropriately describe as the actual income, and the assesseees whose returned income is not

less than 80 per cent. of their actual income. Article 14, it has been consistently held by the Supreme Court, does not forbid classification though it prohibits class legislation. Equality before the law means that among equals the law should be identical and that the like should be treated alike. At the same time, put in other words, equality before the law does not mean that things which are different shall be treated as though they were the same. The permissible classification, according to the pronouncements of the Supreme Court, must satisfy two conditions, namely, (1) it must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (2) the differentia must have a rational relation to the object sought to be achieved by the impugned provision. It has also been repeatedly held that the differentia and object are different elements and that the object by itself cannot be the basis of classification. Another principle equally well settled is that Article 14 condemns discrimination not by substantive law alone but even by procedural law.

5. Having stated the true interpretation and the exact connotation of Article 14, we proceed to determine what is the object of the impugned Explanation and whether the classification that it prescribes is founded on intelligible differentia and whether that differentia has a rational relation to the object sought to be achieved. The petitioner's counsel has read to us

the speech which the Finance Minister made when the Finance Act, 1964, was introduced by him in Parliament, and on the basis thereof he has adopted the stand that the object behind the enactment of the Explanation was to check more effectively the evasion of income-tax. Sri S.K. Ghose, representing the respondent, has not joined issue with the petitioner's counsel on that point. Therefore, according to the parties' counsel the object behind the Explanation was to provide some more effective checks against the evasion of proper taxes by the various assessees. The Explanation, it is not denied, does not fall in the category of a substantive provision of law but answers the description of procedural law. The Explanation purports to raise a presumption against the assessee if certain facts mentioned therein are proved after assessment has been made, and then shift the burden on the assessee to prove that his case does not fall under Clause

(c) of Sub-section (1) of Section 271 of the Act. That clause says that if the Income-tax Officer or the Appellate Assistant Commissioner, in the course of any proceedings under the Act, is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, in addition to any tax payable by him, a sum which shall not be less than twenty per cent., but which shall not exceed one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income. According to the Explanation, if the total income returned by any person is less than eighty per cent. of the total income as assessed, that person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purpose of Clause (c) of Sub-section (1). In other words, if the margin of difference in the case of a particular assessee between the income returned by him and his actual income is more than twenty per cent., then it would be for him to establish that he had not concealed the particulars of his income or furnished inaccurate particulars of that income by reason of fraud or gross or wilful neglect on his part, while in the case of assessee whose returned income reveals less than twenty per cent. departure from the actual income, the burden of proving the ingredients of Clause (c) shall rest, as before, on the income-tax authorities. Obviously, the main purpose of the Explanation is to place the burden of establishing want of fraud or gross or wilful neglect in the matter of income-tax return filed by an assessee on him where the difference revealed between the returned income and assessed income is more than twenty per cent. Therefore, although the ultimate object of the Explanation may be to provide effective checks against evasion of income-tax, the immediate object of the Explanation appears to be that

if an assessee has been apparently guilty of gross deflation of his income as entered in his return compared to his actual income, it shall be for him to establish that he has not merited imposition of penalty under Clause (c) of Sub-section (1). Briefly put, if the gap between the returned and actual income is more than 20%, a presumption of law arises that the assessee's case is covered by Clause (c) but

that presumption being in rebuttal the assessee is given an opportunity to establish that it is not so.

6. The question that next arises for decision is whether the classification of the assessee into two varieties as envisaged by the Explanation is founded on intelligible differentia. We think that it is. The two categories of assessee in legislative wisdom are : (1) who, in the opinion of Parliament, have been guilty of gross and flagrant violation of ethics befitting a citizen in the matter of submission of income-tax returns, and (2) the rest of the assessee falling in the category not answering such description. The Explanation, it seems to us, is an instance of the legal adage *res ipsa loquitur*, meaning that the thing speaks for itself. In substance, Parliament wants the income-tax authorities to assume if the gap between the returned income and the actual income is so glaring as to the extent of no less than twenty per cent. that the assessee in question has concealed the particulars of his income or has furnished inaccurate particulars of such income, but in case the difference is less than twenty per cent., then such assumption would not arise and it shall be for the department to establish that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. In allocating the burden of proof in one class of cases on the assessee and in the other on the departmental authority, we think, Parliament has adopted an intelligible differentia dictated by the experience gathered in administering the Income-tax Act.

7. The main thrust of the argument of the petitioner's counsel against the alleged invalidity of the Explanation is that since it is based on the percentage of gap between returned and actual income for the purpose of allocating the burden on the one party or the other and not on the basis of the amount shown short in the return filed compared to the actual income, conceivably persons attempting to conceal small amounts of money may have to discharge the burden of proving that their case does not fall within the ambit of Clause (c) while those evading higher amounts but not coming within the letter of the Explanation may continue to enjoy the benefit of not being called upon to prove that their case does not fall within the purview of Clause (c). The petitioner's counsel gave an illustration to make his point clear. He said that a big assessee who shows the returned income short by a

few lakhs of rupees but that under-estimation is not less than eighty per cent. of the actual income would successfully avoid the claws of the Explanation, while a smaller assessee whose income may not exceed ten

thousand rupees may yet come within the jaws of the Explanation if his returned income turns out to be less than eighty per cent. of the actual income. The argument on the face of it looks to be attractive. However, it is not for the courts to tell Parliament what sort of classification it should introduce. The function of the courts is only to find out whether the classification actually introduced by Parliament is hit by Article 14 of the Constitution. There may be a variety of classifications which can be introduced for achieving a particular object, but if Parliament in its wisdom adopts one in preference to another, the courts cannot take exception to the classification chosen if it is not proved to be obnoxious to the constitutional provision. We are of the considered view that the classification introduced by the Explanation does not offend Article 14 of the Constitution.

8. The only point that remains to be determined is whether the intelligible differentia deducible from the wording of the Explanation has a rational nexus to the object sought to be achieved by the Explanation. Here, again, our reply is in the affirmative. If the assesseees commit the excess of showing their incomes at figures so sort as to attract the applicability of the Explanation, they shall be presumed to be guilty within the meaning of Clause (c) and liable to penalty to the extent mentioned in Sub-section (1)(iii) of Section 271 of the Act if they cannot prove that the failure to return the correct income did not arise from any fraud of any gross or wilful neglect on their part. The allocation of burden on the assesseees in the circumstances mentioned in the Explanation will surely have a deterrent effect in the matter of submitting under-estimated or false returns with the consequence that the prospects of submitting true returns of the income or returns which are more close to actuality shall brighten up. Hence we are of the considered opinion that there is a rational nexus between the differentia introduced by the Explanation and the object which Parliament had in view in enacting that Explanation.

9. Shri Ghose has brought to our notice a decision of the Allahabad High Court which shows that the matter in issue is not res integra. The decision is Saeed Ahmad v. Inspecting Assistant Commissioner of Income-tax : [1971]79ITR28(All) .. A Division Bench of the Allahabad High Court held in that case that the Explanation is not a rule which creates or negatives any substantive right, that it provides nothing more than a rule of evidence relating to the raising of a rebuttable presumption in certain circumstances, and that such a rule was within the legislative competence of Parliament. The court held further that the ' class of persons to whom the Explanation applies is a rational classification and has nexus with the object intended to be achieved, namely, of discouraging the concealment of the particulars of one's income

during the course of assessment', and that as such it cannot be said that the Explanation violates the provisions of Article 14 of the Constitution.

10. The petitioner's counsel has raised two objections against this decision of the Allahabad High Court being adopted by this court. He has stated in the first instance that the object of the Explanation as mentioned in the decision is not the real object of the Explanation, and that, in the second place, the Division Bench did not consider the lot of those persons whose returned income is not shown to be less than eighty per cent. of the actual income. The object behind the Explanation, according to the Allahabad High Court, was discouraging the concealment of the particulars of one's income during the course of assessment. The object which, according to the petitioner's counsel, Parliament had in view, while introducing this Explanation, we have already set out above. If we juxtapose that object with the object stated by the Allahabad High Court, we find no substantial difference between the two. The difference, if any, is wordy and not real. Nor can we subscribe to the contention that the Allahabad High Court did not consider the lot of those persons who fall outside the provisions of the Explanation vis-a-vis the lot of those who are covered by those provisions. That, in fact, was the only point debated before the High Court as is indicated by the conclusion that ' the class of persons to whom the Explanation applies is a rational classification and has nexus with the object intended to be achieved '. Therefore, we do not

accept the view that the points which have been raised before us were either not raised before the Allahabad High Court or by they were not examined by that High Court. Since our views correspond fully with the views expressed by the Allahabad High Court, we feel that the decision which we have reached is fortified by the opinion expressed by the Allahabad High Court.

11. Another point urged by the petitioner's counsel is that the object which the Explanation seeks to achieve is itself discriminatory and so the Explanation offends Article 14. We find no merit in this submission of the petitioner's counsel, nor we have been able to appreciate what it implies in the context of the impugned Explanation.

12. No other point has been raised before us.

13. In the result, this writ petition fails and is dismissed with costs. Advocate's fee, Rs. 250. The rule issued by this court stands discharged.

Baharul Islam, J.

14. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com