

In Re: Gurcharan Prasad Khatri

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SooperKanoon Citation : sooperkanoon.com/479145

Court : Allahabad

Decided On : Dec-05-1930

Reported in : 131Ind.Cas.875

Judge : Mukerji and ;Bennet, JJ.

Appellant : In Re: Gurcharan Prasad Khatri

Judgement :

1. This is a reference by the Income Tax Commissioner of two points:

(1) Has the Income Tax Officer jurisdiction to impose a penalty in the matter of Income-tax in proceedings for assessment taken under Section 34 of the Income Tax Act?

(2) Has the Income Tax Officer jurisdiction impose a penalty in the matter of supertax under the circumstances of this case?

2. The facts found by the Income Tax Commissioner are that a certain assessee had made a return of Income-tax and had been assessed on February 27, 1928. and subsequently on March 15, 1929, a notice was issued under Section 34 read with Section 22 (2) of the Indian Income Tax Act requiring the assessee to furnish a return and on April 20, 1929, the applicant furnished the return showing the same figure Rs. 72,380, as his total income. This was the same figure which he had previously returned as is admitted before us. Subsequently the applicant's books were produced and his total income was found to have been Rs, 2,92,952

for the year in question. Accordingly the applicant was assessed to Income-tax amounting to Rs. 27,265-13-0 and to super-tax Rs. 28,366, In addition to these assessments a penalty of Rs. 20,000 for Income-tax and Rs. 20,000 for super-tax was imposed on the assessee under the provisions of Section 28.

3. The first question referred to us is whether the Income Tax Officer could impose the penalty of Rs. 20,000, under Section 28 of the Income Tax Act in regard to the assessment of Income-tax which he found to have been under assessment of Income-tax which he found to have been under-assessed by Rs. 27,265-13-0 less the original assessment of Rs. 6,6353-0. The argument of the learned Counsel for the assessee is to the effect that the penalty under Section 28 can only be imposed in the course of the original assessment proceedings, and that it cannot be imposed when the original assessment has been made and when further proceedings have been taken at a later date under Section 34 of the Indian Income Tax Act. The argument is based on the fact that Section 28 does not refer to Section 34. But that Section 28 does begin as follows:

'If the Income Tax Officer.... in the course of any proceeding under this act is satisfied that an assessee has concealed the particulars of his income.' This shows that Section 28 is not merely intended by the Act to apply to an assessment under the preceding sections but that it may refer to any proceeding whatever under the Income Tax Act. Now Section 34 is a section which lays down proceedings under the Income Tax Act and accordingly proceedings under Section 34 are proceedings in the course of which Section 28 may be applied.

4. Further Section 34 itself states that under that section there may be a notice under Sub-section (2) of Section 22 'and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section,' Thus Section 31 also shows that proceedings taken under it follow the routine laid down by Chap. IV for the original assessment of income to Income-tax, and that Section 28 which is a part of that procedure will also apply to the re-assessment proceedings under Section 34.

5. We, therefore, answer the first question in the affirmative.

6. The second question is: 'Has the Income Tax Officer jurisdiction to impose a penalty in the matter of supertax under the circumstances of this case? As stated already the Income Tax Officer imposed a penalty of Rs. 20,000 in regard to super-tax as well as the penalty of Rs. 20,000 in regard to Income-tax and he purported to impose this penalty for super-tax under the provisions of Section 28. Now for the Crown the argument as to the jurisdiction of the Income Tax Officer to impose this penalty for super-tax is stated as follows. Chapter IX of the Indian Income Tax Act deals with super-tax and it states that super-tax is 'an additional duty of Income-tax (in this Act referred, to as super-tax).' Section 58 (1) of that Chapter is as follows:

7. 'All the provisions of this Act, except Section 3 the proviso to Sub-section 1 of Section 7, the provisos to Section 8, Sub-section (2) of Section 14, and Sections 15,17,18, 19, 20, 21 and 48, shall apply, so far as they may be, to the charge, assessment, collection and recovery of super-tax.' Now it is argued for the Crown that Section 28 is not one of the sections of the Act exempted from application to super-tax. On the other hand the learned Counsel for the assessee points out that the provisions of the Act are by Section 58 (1) only to apply 'so far as may be, to the charge, assessment, collection and, recovery of super-tax.' There is nothing stated in regard to penalties. It was argued that penalty would come under the heading of assessment and no doubt Section 28 does come in Chap. IV, which is headed 'deductions and assessment.' But if that argument were accepted, then we would point to Chap. VI, which is headed 'Recovery of, Tax and Penalties', where Section 47 states that any sum imposed by way of penalty under Section 28 may be recovered in the manner provided by that. Chapter for the recovery of arrears of tax.

8. If, therefore, the argument were sound that Section 28 applied because Chap. IV is headed 'deductions and assessment', then the situation would be that the Income Tax Authorities could impose a penalty in regard to super-tax but it could not recover that penalty. It is clear that the Legislature could not have had such an intention. Now we consider that a section in regard to a penalty such as Section 28 must be strictly construed. The section states that 'he may direct that the assessee shall, in addition to the Income-tax payable by him, pay by way of penalty a sum

not exceeding the amount of Income tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.' There is no word whatever in this section in regard to super-tax. If the Legislature had intended that super-tax should also involve a penalty, we consider that the Legislature would have already specified in this section 'in addition to the Income-tax or super-tax if any payable by him.' But in the absence of such precise words in the section we do not consider that the meaning should be read into this section by way of implication from Section 58(1), and Section 55. The learned Government Advocate further referred to the fact that Act XI of 1922 is known by the title of Indian 'Income Tax Act.' But the correct title of the Act is 'an Act to consolidate and amend the law relating to Income-tax and supertax. The very title of the Act, therefore, observes the distinction to be drawn between Income-tax and super-tax. Further in Section 2 of the Act there is no definition of Income-tax as including super-tax. And the definition in Section 55 that super-tax is an additional duty of Income-tax also adds 'in this Act referred to as super-tax'. The Act, therefore, carefully states in Section 55 that supertax is referred to in the Act as super-tax. It would, therefore, not be correct to read the word 'Income tax.' in Section 28 as including super-tax unless it were clearly laid down in, 58(1) that the provisions of the Act in regard to penalties would apply to supertax.

9. Accordingly we answer the second question in the negative.

10. In argument before us a third point was raised in regard to procedure. We may observe at once that this point was not referred to us under Section 66 of the Income Tax Act. The point was that on 15th March, 1929, the Income Tax Officer issued a notice to the assessee for re-assessment under Section 34. On 16th December, 1929, having examined the books of the assessee he issued a further notice to the assessee to show cause on the 19th December, why a penalty should not be imposed on the assessee under Section 28. On the 21st December, 1928, the Income Tax Officer passed an order for re-assessment and also in the same order he directed that the assessee should pay a penalty under Section 28.

11. Now the point taken for the assessee is that Section 28 states that if the Income-Tax Officer is satisfied that an assessee has concealed the particulars of

his income he may impose a penalty. From these words it is urged that the order of re-assessment should have been made first and then a notice should have issued to the assessee to show cause why a penalty should not be imposed to him. There is nothing whatever in Section 28, to indicate that this procedure is necessary. We consider that the requirements of Section 28 were fulfilled when on 21st December, 1929, the Income Tax Officer was satisfied that the assessee had concealed his income and he thereupon proceeded to impose the penalty under that section, The notice was only issued in compliance with the proviso in that section and that proviso does not say that the Income Tax Officer should be so satisfied when he issues the notice. We consider, therefore, that there was no defect in procedure and further it is not alleged that the assessee was in any way prejudiced by the procedure adopted. As the reference has been decided to an equal extent in the affirmative and in the negative, we direct that the parties shall pay their own costs. The learned Government Advocate states that he is entitled to a fee of Rs. 250 and we direct that that amount be taken as his fee.