

Som Engineering Corporation Vs. Cit

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Court : Allahabad

Decided On : Oct-29-2004

Reported in : [2005]144TAXMAN18(All)

Appeal No. : IT Ref. No. 192 of 1985 29 October 2004 A.Y. 1971-72

Appellant : Som Engineering Corporation

Respondent : Cit

Advocate for Pet/Ap. : Vikram Gulati, *for the Assessee* A.N. Mahajan, *for the Revenue*

Judgement :

R.K. Agrawal, J.

The Tribunal, Allahabad has referred the following question of law under section 256(1) of the Income Tax Act, 1961, hereinafter referred to as the Act, for opinion to this court :

'Whether, in the facts and circumstances of the case, was the Tribunal legally right in holding that the provisions of the Explanation to section 271(1)(c) were attracted to the case ?'

2. Briefly stated, the facts giving rise to the present reference are as follows :

The reference relates to assessment year 1971-72. For the assessment year 1971-72, the applicant filed its return of income on 30-12-1971, showing the total income of Rs. 71,870. However, the assessment was completed on an income of Rs. 1,68,350. The penalty proceedings under section 271(1)(c) were initiated for concealing the particulars of income and a notice was issued on 21-3-1977. No reply was received. On 4-10-1978, another show-cause notice was issued to the applicant requiring it to show cause as to why the penalty under section 271(1)(c) of the Act should not be levied. For reasons best known to the applicant, it did not file any reply. The Income Tax Officer imposed a sum of Rs. 51,314.74 as penalty under section 271(1)(c) of the Act. The penalty was imposed on the ground that during the course of assessment proceedings, books of account of the firm were scrutinized and on scrutiny of the purchase of goods account appearing at pp. 242-243 and ledger p. 369 revealed that an item of Rs. 51,314.74 was debited to the purchase account at ledger p. 242 which was included in the entry of Rs. 2,25,169.58. This amount was transferred to ledger page No. 242 (bearing account) and was debited to the purchase account by interpolation. Thus, the aforesaid amount of Rs. 51,314.74 had been debited twice to the purchase of goods account suppressing the profit to the said extent. No explanation was offered except that it appears to be some compensatory error. In appeal, the CIT(A) deleted the imposition of penalty. The revenue feeling aggrieved preferred the appeal before the Tribunal. The Tribunal has allowed the appeal.

3. We have heard Sri Vikram Gulati, learned counsel for the applicant, and Sri A.N. Mahajan, learned standing counsel appearing for the revenue.

4. Learned counsel for the applicant submitted that the item of Rs. 51,314.74 was entered twice in the purchase account on account of some error but it did not reflect on the profits of the firm. According to him there was neither any gross and wilful neglect on the part of the assessee nor any fraud was committed by the applicant. Therefore, the penalty was not exigible. In support of his aforesaid plea, he relied upon the following decisions

(1) CIT v. Anwar Ali : [1970]76ITR696(SC)

(2) CIT v. Khoday Eswarsa & Sons : [1972]83ITR369(SC)

(3) CIT v. S. Devendra Singh : [1977]108ITR314(All)

(4) Addl. CIT v. Chatur Singh Taragi : [1978]111ITR849(All)

5. Sri Mahajan, the learned standing counsel appearing for the revenue submitted that the applicant had not submitted any reply before the assessing authority in the course of the penalty proceedings and, therefore, the Explanation to section 271(1)(c) of the Act was attracted as the assessee had not discharged the onus, the penalty had rightly been imposed.

6. It may be mentioned here that by section 40 of the Finance Act, 1964, the word deliberately occurring in clause (c) of section 271(1) of the Act has been omitted and the following Explanation was inserted at the end of sub-section (1) :

'Explanation. 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 a 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 subsection. '

7. Prior to the aforesaid amendment made by the Finance Act, 1964, the Apex Court in the cases of Anwar Ali (supra) and Khoday Eswarsa & Sons (supra) has held that the burden is on the department to prove that a particular amount is a revenue receipt. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false does not necessarily give rise to the inference that the disputed amount represents income and it cannot be said that the finding in the assessment proceedings for determining or computing the tax is conclusive. It is only a good evidence. Before the penalty can be imposed, the entirety of circumstances must reasonably point to the conclusion that the disputed amount

represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

8. However, with the incorporation of Explanation to section 271(1) of the Act, the Apex Court has held in the cases of CIT v. Mussadilal Ram Bharose : [1987]165ITR14(SC) , CIT v. KR. Sadayappan : [1990]185ITR49(SC) , Addl. CIT v. Jeevan Lal Sah : [1994]205ITR244(SC) , and B.A. Balasubramaniam & Bros. Co. v. CIT : [1999]236ITR977(SC) that the view which had been taken earlier in CIT v. Anwar Ali (supra) no longer holds the field and it is for the assessee to discharge the onus, as contemplated in the said Explanation.

9. In the case of K.P. Madhusudhanan v. CIT : [2001]251ITR99(SC) , the Apex Court has held that the Explanation to section 271(1)(c) is a part of section 271. When the assessing officer or the Appellate Assistant Commissioner issues a notice under section 271, he makes the assessee aware that the provisions thereof are to be used against him. These provisions include the Explanation. By virtue of the notice under section 271, the assessee is put to notice that, if he does not prove, in the circumstances stated in the Explanation, that his failure to return his correct income was not due to fraud or neglect, he shall be deemed to have concealed the particulars of his income or furnished inaccurate particulars thereof, and, consequently be liable to the penalty under the section. No express invocation of the Explanation to section 271 in the notice under section 271 is necessary before the provisions of the Explanation are applied.

10. Reliance placed by the learned counsel for the applicant on the following decisions :

(1) CIT v. Anwar Ali (supra)

(2) CIT v. Khoday Eswarsa & Sons (supra)

(3) CIT v. S. Devendra Singh (supra)

(4) Addl. CIT v. Chatur Singh Taragi (supra)

is also misplaced.

11. In the case of S. Devendra Singh (supra), this court has held that the fact that the Explanation was applicable made no difference. It only raises a presumption which is rebuttable and shifts burden of proof from the department to the assessee. But when the question of concealment is decided on the evidence on record, the question of the burden of proof becomes immaterial. The presumption can be rebutted not only by direct evidence, but also by circumstantial evidence and where the Tribunal having come to the conclusion that the omission to include Rs. 2,400 in the return was accidental and was not due to any deliberate design, it could be safely presumed that the presumption raised by the Explanation stood rebutted.

12. In the case of Chatur Singh Taragi (supra), this court has held that merely because the explanation of the assessee is inaccurate or false is by itself no ground for holding that the charge of concealment had been proved. The additions made by the Income Tax Officer to the assessable income have been found by the Tribunal to be all by estimate based upon the fact that the books of account were not properly maintained and were not open to verification and there was no particular item of income which the assessee could be said to have omitted to include in its return and in view of the shortcomings in the accounts the additions were called for. The Tribunal had held that the charge of concealment could not be said to have been established where the Tribunal had found, having regard to the facts and circumstances of the case, the difference between the assessed and the returned income was not due to gross or wilful neglect on the part of the assessee as there was ample material for the finding of the Tribunal that the assessee was not guilty of gross or wilful oversight and the penalty was not exigible.

13. It may be mentioned here that the Explanation to section 271(1)(c) of the Act clearly attracted in the present case inasmuch as the assessed income was more than 80 per cent of the returned income being Rs. 1,63,850 as against the returned income Rs. 71,870. The onus was on the applicant which it had failed to discharge as no explanation whatsoever was given by it before the assessing officer. Moreover, the Tribunal has recorded a clear finding that by debiting the amount of purchase of goods at Rs. 51,314.74 twice, the profits have been reduced.

14. In view of the foregoing discussion, we are of the considered opinion that the Tribunal was justified in levying the penalty and upholding the order of the Income Tax Officer imposing the penalty. We, therefore, answer the question referred to us in the affirmative, i.e., in favour of the revenue and against the assessee. However, there shall be no order as to costs.

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