S. Puran Sethi Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-09-1986

Reported in : (1986)19ITD18(Delhi)

Judge : S Narayanan, M Agarwal

Appellant : S. Puran Sethi

Respondent : inspecting Assistant

Judgement :

1. The assessee is an individual. His sources of income are from Gulab Singh Sethi & Sons, an unregistered firm, income from house property at 47, Hanuman Road, New Delhi and from other sources.

2. This appeal by the assessee is against the levy of penalty of Rs. 4,000 under Section 271(1)(c) of the Income-tax Act, 1961 ('the Act').

The assessee declared an income of Rs. 80,556 in his return for this year. Admittedly this did not include income from the (self-occupied) property at Hanuman Road, assessed at Rs. 2,500 this year and Rs. 1,500 being the annuity refund receivable for this year. It was finally assessed at Rs. 1,36,131. On the completion of the assessment a notice under Section 271(1)(c) was issued to the assessee for omission of the items of Rs. 2,500 and Rs. 1,500 noted supra. In response to the above notice, the assessee filed a reply dated 28-3-1979. This reply dealt with only Rs. 1,500 and not the other omission of Rs. 2,500. It was

explained by the assessee here that though he had not disclosed any income on annuity refund (Rs. 1,500) that came to be assessed for this year, no penalty was leviable with regard to the same as the assessee had not received the said refund during the relevant previous year and had been under the impression that it was assessable on receipt basis.

The IAC (Assessment), apparently had in mind actually both the items, viz., Rs. 2,500 on account of notional income from self-occupied property brought to assessment this year though not returned and Rs. 1,500 on account of the above annuity refund. The IAC (Assessment) found the assessee's explanation to be unsatisfactory. According to him the assessee was guilty of furnishing inaccurate particulars of income in his return. In this view, he levied the impugned penalty. The assessee appealed.

3. Before the Commissioner (Appeals) the following submissions were raised : (i) The assessee was not in law the owner of the self-occupied property. His name came to be registered as the owner of the property in the municipal records only in 1970.

(ii) Apart from the above, income from the said property was so small (Rs. 2,500) in the context of the assessee's total income returned (Rs. 80,556) that there could be no charge of concealment in this regard.

(iii) Income from self-occupied property was only notional income and not real income. Hence, no penalty could be levied with regard to such an income.

(iv) The annuity refund was not disclosed as the assessee was under a bona fide impression that it was taxable on receipt basis.

(v) That IAC (Assessment) had presumably accepted that the burden on the assessee under the Explanation to Section 271(1)(c) stood discharged ; and had proceeded to levy the penalty on the ground that the assessee had concealed the said items of income. The IAC was not justified in doing so.

4. The Commissioner (Appeals) found no merit in the above submissions.

According to him the explanation for the non-disclosure given out in first appeal was an afterthought. He noted that the assessee had inherited the property in question on the death of his father, sometime in 1964 and that the assessee had applied to the municipal corporation for transfer of the property in his name in the municipal records as far back as 1966 ; that the municipality made the necessary entry in its records only in 1970 showing the assessee as the owner of the said property. In such a factual context the Commissioner (Appeals) was of the view that the assessee could not take the plea that he was not the owner of the property until 1970. He was in fact residing in the said property, enjoying the said property as the rightful owner. In this view the Commissioner (Appeals) rejected the submission raised for the assessee on this aspect.

5. The Commissioner (Appeals) found no substance in the other submissions also. According to him there was no particular quantitative relation between the total income returned and the income sought to be concealed. Even when the income returned was very high a taxpayer might try to conceal a small item of income. Hence, according to the Commissioner (Appeals), the assessee could not derive any benefit from such a stand. Nor did the Commissioner (Appeals) find any merit in the argument that the income from the said property being a notional or deemed income, a penalty was not to be levied for omission of such an item of income from the return. The Commissioner (Appeals) was of the view that the assessee had no acceptable explanation for the omission of the annuity refund also. He observed that the assessee was assisted by a chartered accountant in tax matters and hence it was all the more clear that the assessee had come within the ambit of Section 271(1)(c) following his omission to return these two items of income. In these circumstances, he confirmed the penalty.

6. We have heard both Shri C.S. Aggarwal, the learned counsel for the assessee, as well as Smt. Archana Ranjan, departmental representative.

7. We have considered the position. One of the arguments taken before us was that the assessee was ignorant of the fact that even the notional income from self-occupied property had to be returned for assessment. The learned counsel's argument was that the concept, ignorance of law could not be an excuse for a

statutory default, was an outmoded one; that on the contrary no man is presumed to know the entire law of the country. The counsel supported this argument by relying on the decision in Motilal Padampat Sugar Mills Co. Ltd. v.State of U.P. [1979] 118 ITR 326 (SC). We have seen the decision. That decision is certainly no authority for the proposition argued by the learned counsel. It must be remembered that the ratio of a decision cannot be torn out of its factual context. In Motilal Padampat Sugar Mills Co. Ltd.'s case (supra) an issue for decision was on when the doctrine of promissory estoppel could be invoked. The Supreme Court held that the facts necessary for invoking the said doctrine were clearly present in the case before it ; and that the U.P. Government was bound to carry out its representation and exempt the appellant-company there from sales tax in respect of sales of vanaspati effected by it in U.P. for a period of three years from the date of commencement of production ; and that the U.P. Government was not entitled to recover such sales tax from the appellant. The Court did note the fact that the appellant had written at one stage a letter (dated 25-6-1970) to the Government accepting the levy of a concessional rate of sales tax but held that this did not amount to waiver of its claim for exemption from the levy. According to the Court, waiver is a question of fact. It has to be properly pleaded and proved. The factual foundation for the claim of waiver has to be laid in the pleadings. There could be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it.

8. On the facts before it the Supreme Court found it difficult to speculate on the reasons for which the assessee wrote in its letter dated 25-6-1970 to the U.P. Government that it would avail of the concessional rate of sales tax. According to the Court, the claim of the appellant before it could be sustained only on the doctrine of promissory estoppel and this doctrine was not so well defined in its scope and ambit that the Court must necessarily held that the appellant had knowledge of its right to exemption on the basis of promissory estoppel at the time when it sent the letter of 25-6-1970. It was in the context of the discussion on this aspect-fore-knowledge of the doctrine of promissory estoppel that the Court pointed out that there was no presumption that 'every person knows the law'. It quoted with approval Maula, J. in Martindale v. Falkner [1846] 2 CB 706 to the effect that it would be contrary to commonsense and reason to presume that every

person knows the law. It also noted the observations of Lord Atkin in Evans v. Bartlam [1937] AC 473 (HL). Who put the point in its proper context when he said ". . . the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application." [Emphasis supplied]. The Court went on to record its finding that on the facts before it, it could not be presumed that the appellant before it had had full knowledge of its right to exemption so as to warrant the inference that it had waived such a right in its letter of dated 25-6-1970. In this view it rejected the plea of waiver raised on behalf of the State Government.

9. From the above, it would be at once evident that what the learned counsel has attempted to do here is to offer ignorance of law as an excuse. This is certainly not permissible. True, there is no presumption that every man knows the law. But from this it cannot be argued that ignorance of law is an excuse for any statutory default. As observed by Lord Atkin in Evans' case (supra) the maxim, ignorance of law does not excuse, has a 'very different scope and application'. To accept such a plea as raised before us by the assessee's learned counsel is to render, at one stroke, all the sanctions in the statute against tax delinquencies, totally ineffective. We do not propose to interpret the law in such a radical manner. This plea of the assessee, based on 'ignorance' of law, stands rejected.

10. We, however, find some merit in the argument of the assessee's counsel that this is a case covered by the Explanation to Section 271(1)(c). Under the Explanation the burden on the assessee is to show preponderance of probabilities. The assessee's explanation is that he had no intention of concealing such small items of income as Rs. 2,500 and Rs. 1,500 in the context of the total income of Rs. 80,556 disclosed by him in the return thus raising probabilities in his favour, i.e., the claim that the notional income (self-occupied property) as well as the annuity refund were omitted to be shown under an erroneous but bona fide belief has to be accepted on probabilities.

Hence, our finding is that the burden on the assessee stood discharged.

It was then for the IAC (Assessment) to bring on record cogent material to show mens rea in the matter. We find that there is no such material available on record. In other words, the IAC (Assessment) failed to discharge the burden that came to be shifted on to him in the matter when he levied the penalty holding the assessee to be guilty of furnishing inaccurate particulars of his income. In this view of the matter, the penalty requires to be cancelled. We direct accordingly. In the view we have taken it is not necessary to consider further the question whether an item of notional income such as income from self-occupied property could be the subject of a penalty under Section 271(1)(c).