

Varun Enterprises Vs. Assistant Commissioner of Income Tax.

Varun Enterprises Vs. Assistant Commissioner of Income Tax.

SooperKanoon Citation : sooperkanoon.com/700813

Court : Delhi

Decided On : Sep-16-1992

Reported in : (1993)47TTJ(Del)461

Appeal No. : ITA Nos. 3607 & 3510/Del/1987; Asst. yr. 1983-84

Appellant : Varun Enterprises

Respondent : Assistant Commissioner of Income Tax.

Judgement :

ORDER

M. A. BAKSHI, J. M. :

We are disposing of these two appeals of the assessed, one against levy of penalty under S. 271(1)(c) and another against levy of penalty under S. 273(2)(a) by this consolidated order for the sake of convenience. We shall first take up the appeal relating to penalty under S. 271(1)(c).

2. Appellant is a partnership firm consisting of three partners, namely, Shri Deepak Singh representing M/s. Deepak Singh & Family (HUF) having 67% share, Shri K. S. Kalra representing his HUF M/s. K. L. Kalra & Son having 11% share and Smt. Harish Kalra wife of Shri K. S. Kalra having 22% share in the firm. The appeal is against the confirmation of penalty of Rs. 9,04,274 for asst. yr. 1983-84 imposed under S. 271(1)(c) of the IT Act, 1961.

assessed had furnished the return of income for asst. yr. 1983-84 at Rs. 18,27,300 on 14th June, 1983. In this return assessed had claimed deduction under S. 35CCA of the IT Act, 1961 (hereinafter referred to as the Act) of a sum of Rs. 7,50,000 purportedly on account of donations made in favor of HACP Rural Development Association, Hyderabad, an institution approved by the prescribed authority for the purposes of S. 35CCA of the Act. The return of income was, however, revised on 8th Nov., 1983 in which the claim under S. 35CCA was omitted and the income declared was Rs. 25,75,430. Tax due on the basis of the revised return was also paid. Assessment proceedings had been taken up by the ITO at Jaipur by the issue of notice under S. 143(2) on 25th Nov., 1983. However, after some hearing had taken place at Jaipur, jurisdiction of this case was transferred to the ITO, Central Circle VIII, New Delhi by an order under S. 127. The ITO Central Circle completed the assessment under S. 143(3) vide order dt. 25th March, 1986 on a total income of Rs. 36,69,650. In computing the total income certain additions/disallowances had been made by the Assessing Officer. assessed appealed to CIT(A), who vide order dt. 11 Nov., 1987 almost confirmed all the additions made by the Assessing Officer. assessed appealed to the Tribunal. Vide order dt. 31st July, 1991 in ITA No. 447/Del/88 asst. yr. 1983-84 the appeal of the assessed has been partly allowed, and most of the additions have been deleted.

3. In the assessment order vide para 2, the Assessing Officer held that the donations of Rs. 7,50,000 purportedly made to HACP Rural Development Association, Hyderabad, was bogus and that the assessed had withdrawn its claim by filing a revised return after the IT Department had discovered the nature of donations as bogus. The Assessing Officer accordingly initiated penalty proceedings for assessed having concealed the income at the time of filing of the original return of income. assessed was given an opportunity of being heard and during the course of penalty proceedings assessed was also asked to explain as to why penalty may not be imposed in respect of other three additions also. The other three additions are as under :

(a) Rs. 48,543 on account of under valuation of closing stock.

(b) Rs. 8,64,102 on account of payment of commission to Shri B. L. Parikh.

(c) Rs. 50,000 in respect of loan obtained from Shri A. K. Gupta.

assessed raised objection in regard to initiation of penalty proceedings on account of three items on the ground that the Assessing Officer had not specifically initiated penalty proceedings in respect of these items during the course of assessment proceedings. In respect of claim of Rs. 7,50,000 assessed pleaded that the claim made in the original return was bona fide and that the revised return was filed voluntarily on the basis of information collected by the assessed on its own. Assessing Officer not being satisfied with the Explanationn furnished by the assessed imposed a penalty of Rs. 9,04,274.

4. assessed appealed to CIT(A), who vide order dt. 7th Feb., 1989 confirmed the penalty. It may be pointed out that in respect of the claim of donation under S. 35CCA of Rs. 7.5 lakhs penalty has been imposed at the maximum rate of 200% of the tax sought to be evaded. In respect of other three items, penalty has been imposed at 150% of the tax sought to be evaded. assessed is in appeal. At the very outset, learned counsel Shri R. Ganeshan contended that in respect of three items penalty under S. 271(1)(c) is to be deleted in view of the decision of the Tribunal whereby these additions have been deleted.

5. In respect of the claim under S. 35CCA it has been explained that deduction to the tune of Rs. 7,50,000 had been genuinely claimed as the amount had been donated to HACP Rural Development Association, Hyderabad. assessed according to the learned counsel had the receipts for these donations Along with copy of the approval granted to the institution which had been attached to the return of income. The payment had been made by means of crossed cheques and the receipts numbering 204 to 208 for Rs. 1 lakh each and No. 209 for Rs. 2.5 lakhs dt. 29th June, 1982 indicated the cheque numbers Along with the dates. According to the learned counsel on 4th Sept., 1983 a public notice had appeared on behalf of Hasti Mal Sancheti Memorial Trust, Pune, alleging that certain persons were posing themselves as authorised to collect the donations from the trust whereas they were not so authorised. According to Shri Ganeshan Inalsa P. Ltd. had made a donation to Hasti Mal Sancheti Memorial Trust during the

financial year ended on June, 1983 through a person purportedly representing the trust. Efforts were made to find out as to whether the donations had reached the trust. On 14th Sept., 1983 the officers of the Intelligence Wing of Income-tax, Mayur Bhavan conducted a survey at the business premises of the Inalsa P. Ltd. On 16th Sept., 1983 Shri Deepak Singh, according to the learned counsel, wrote to Shri Prem Prakash to ascertain the identity and the genuineness of the trust representative to whom donation cheques meant for Hasti Mal Memorial Trust had been handed over. On 17th Sept., 1983 Shri Prem Prakash replied detailing the action taken by him. On the basis of the public notice issued by Hasti Mal Sancheti Memorial Trust, Pune on 4th Sept., 1983 it is stated that Shri Deepak Singh contacted Shri Prem Prakash to ascertain whether donations paid by the firm or its association were in order or otherwise. On 8th Oct., 1983 Shri K. S. Kalra, it is claimed, had written to Shri Prem Prakash requesting to confirm as to whether the amount of donation paid by the firm had actually reached the donee trust or not. In this letter, according to the learned counsel, a reference had been made to the problems relating to Inalsa donations to the Pune Trust and a keenness was expressed to ascertain the name of the representative to whom the aforesaid donation had been made. On 10th October, Shri Prem Prakash had confirmed having received the cheques from the assessed and the others. He also confirmed that the donation cheques had been handed over to the authorised representative of the trust. He had promised to revert back after collecting more concrete evidence in the matter. On 14th Oct., 1983 Shri Kalra, it is claimed had signed another letter to Shri Prem Prakash expressing his anxiety on the matter. On 15th Oct., 1983 it is claimed by the learned counsel that Shri Prem Prakash informed Shri K. S. Kalra that various donations had been handed over to Shri Vipin Mehra and Shri P. P. Verma. It was further stated by Shri Prem Prakash that he understands that the money in all the cases had not reached the trust. Shri Prem Prakash had suggested direct correspondence with Shri Vipin Mehra and Shri P. P. Verma to ask for their Explanationn to press for the refund of the money. On 18th Oct., 1983, learned counsel stated that Shri K. S. Kalra wrote two different letters to the aforesaid two persons in which they were asked to settle the matter urgently or else face legal action. On 24th Oct., 1983 Shri Vipin Mehra and Shri P. P. Verma wrote identical letters to Shri Kalra resenting the letter threatening legal

action. Serious allegations were made against Shri Kalra. A telegram had also been sent by these persons in this regard. According to the learned counsel Shri Kalra wrote to Shri Prem Prakash that Shri Vipin Mehra and Shri P. P. Verma having been introduced by him to Shri Kalra, he would be responsible to ensure satisfactory settlement of the whole affairs failing which legal action could be taken. Letter dt. 28th Oct., 1983 in this regard was referred to by the learned counsel. On 31st Oct., 1983, Shri Prem Prakash according to the learned counsel replied by regretting the strange stand taken by Shri Vipin Mehra and Shri P. P. Verma and that they are prepared to refund the money and give affidavits outlining their modus operandi provided no legal proceedings were lodged against them. Shri Prem Prakash thereafter obtained sworn affidavits from Shri Vipin Mehra and Shri P. P. Verma regarding their role in the matter. In these affidavits it has been categorically affirmed by these persons that the money had been received by them which had been kept by Mrs. Mehra partly in one of his lockers and partly in the investment bonds. In these affidavits there was unqualified undertaking to refund the moneys to the assessed firm. According to the learned counsel, the moneys more or less were returned to the assessed as promised. On these developments when assessed came to know that the donations had not been received by the Institution, a revised return was filed. The learned counsel contended that assessed had no intentions of making a false claim as alleged by the Revenue. The facts and circumstances and the material on record, according to the learned counsel, is sufficient to establish that the claim made by the assessed on account of donations was genuine and the disclosure made in the revised return was voluntary. The learned counsel relied upon the decision of the Delhi High Court in the case of Quammar-ud-din & Sons vs . CIT : [1981]129ITR703(Delhi) in support of the contention that before a penalty for concealment is imposed upon the assessed, all the circumstances and developments till the assessment is completed should be taken into account and if the collective effect of the situation is that the failure to return the correct income was not on account of gross or willful neglect the assessed should not be penalised. According to the learned counsel, in this case there was no gross or willful neglect on the part of the assessed. assessed had issued the donations by cheque and had the receipts in respect of the same. At the time of the filing of the original return assessed had no reasons to

believe that the donation made had not reached the trust. According to Shri Ganeshan, the correspondence on record establishes the fact that as soon as assessed received the information about the donations not having reached the trust the claim was withdrawn and tax paid. In such circumstances, penalty under S. 271(1)(c), according to the learned counsel, is not warranted. Referring to the decision of the Supreme Court in *Sir Shadi Lal Sugar & General Mills Ltd. vs . CIT* : [1987]168ITR705(SC) learned counsel contended that the mere fact that assessed agrees to the addition of the amounts in the assessment is not conclusive to show that the assessed had concealed the income. The facts and circumstances of the case must support the conclusion that assessed has concealed the income. In this case, according to the learned counsel, on the basis of the evidence on record, no penalty is warranted.

6. The learned Departmental Representative Shri A. K. Gupta, on the other hand, contended that the facts and circumstances of this case directly lead to the conclusion that assessed had made a wrong claim under S. 35CCA in the original return of income. Shri Gupta pointed out that assessed had issued six cheques on account of the donation purportedly to HACP Rural Development Association, Hyderabad. Four cheques had been drawn on State Bank of India, Jaipur South out of which three were dt. 28th June, 1982 and the fourth one was dt. 29th June, 1982. These four cheques were marked crossed cheques. Two cheques of Rs. 1 lakh each dt. 29th June, 1982 had been issued on P&SB, New Delhi. These cheques had been initially marked payees account but it is established on record that the endorsement account payee had been deleted under the signatures of the drawer. It is the claim of the assessed that these cheques had been handed over to one Shri Prem Prakash. Shri Prem Prakash, according to the learned Departmental Representative is a close business associate of the assessed and was director of Meghdoot Enterprises P. Ltd., a holding company of Inalsa P. Ltd. of the DCM Group. According to Shri Gupta, it has been established by the Assessing Officer that these cheques had been deposited in the bank account of Parvati Charitable Foundation of which Shri Prem Prakash was one of the Governors. It has also been established, according to the learned Departmental Representative, that the amount has been withdrawn from Parvati Charitable Foundation by the employees of Shri Prem Prakash. Shri Gupta contended that

from the evidence on record it is established beyond any doubt that Shri Prem Prakash was aware that the money had not been paid to HACP Rural Development Association, Hyderabad. Shri Gupta contended that it is strange to note that the correspondence relied upon by the assessed gives the impression as if Shri Prem Prakash did not know anything about the donations not having reached the institution. Shri Gupta contended that the records establish otherwise. According to Shri Gupta, Shri Prem Prakash did appear before the Assessing Officer but refused to give any statement. The learned Departmental Representative contended that assessed has strongly pleaded that the transactions had been done through Shri Prem Prakash. According to the learned Departmental Representative it is strange to note that Shri Prem Prakash still continues in the employment of the Group. In this connection he placed photostat copy of verification from return of income signed by Shri Prem Prakash as authorised officer of Mohan Madan Lal Shri Ram Investment Co. of DCM Group. Shri Gupta pointed out that Shri Deepak Singh, one of the partners of the firm is the son-in-law of one of the directors of DCM Group. Reliance was placed on the statement of Shri Prem Prakash placed at page 30 of the paper book. It was contended that Shri Prem Prakash knew where the money purportedly donated had gone. The money had been deposited in Parvati Charitable Foundation of which Shri Prem Prakash was the Governor.

7. Referring to the evidence relied upon by the learned counsel for the assessed that enquiries were made after the appearing of warning in the newspaper, the learned Departmental Representative contended that these letters are from interested parties. These letters, according to the learned Departmental Representative, appeared to be a made up affair. It was accordingly pleaded that such evidence has got to be ignored. Shri Gupta further contended that assessed had been given opportunity to cross-examine the witnesses which were not availed. In this connection, he referred to the order sheet entries dt. 12th July, 1988. Shri Gupta further contended that the DCM Group had its own charitable institutions. According to him, why did the assessed chose to donate huge sums to other institutions is a pondering question which has remained unanswered. Shri Gupta referred to the assessment order where specific instances have been made by the Assessing Officer about assessed having made donations in the past of

very small amounts by means of account payee cheques. Shri Gupta pointed out that such donations not even exceeding Rs. 1,000 had been made by account payee cheques. assessed not having issued cheques marked account payee would be sufficient to establish that assessed had no intentions of making the donations to the trust, it is claimed by the Departmental Representative.

8. Shri Gupta contended that certain papers such as a note on the newspaper and letter regarding Ram Krishan Mission were not available before the Assessing Officer. Shri Gupta contended that the evidence on record establishes the fact that assessed did not file revised return voluntarily. Department had enough evidence to prove the guilt of the assessed. In this connection Shri Gupta contended that Intelligence Wing of the department is part of the IT Department and cannot be considered to be a separate department. He relied upon the decision of the Kerala High Court in the case of Union Engg. Co. vs . CIT 0065/1979 : [1980]122ITR719(Ker) in support of the contention that the revised return filed by the assessed after the Department having started the enquiries would not be a voluntary return and that penalty for concealment would be warranted. Reliance was also placed on the decision of the Allahabad High Court in the case of Mohd. Ibrahim Azimulla vs . CIT : [1981]131ITR680(All) in support of the contention that the disclosure made under the threat of being caught is not voluntary. Another decision in the case of Mool Chand Mahesh Chand vs . CIT : [1978]115ITR1(All) was also relied upon in support of the contention. According to Shri Gupta, there being enough evidence on record to support the finding of the Revenue authorities that assessed had made a false claim in regard to the donations amounting to Rs. 7,50,000, penalty under S. 271(1)(c) was justified.

9. The learned counsel for the assessed in counter reply sought to distinguish the cases cited on behalf of the Revenue. Shri Ganeshan contended that the referred cases are relating to application for consideration of waiver of penalty under S. 273A and not for purposes of levy of penalty under S. 271(1)(c).

10. We have given our careful consideration to the rival contentions. Penalty of Rs. 9,04,274 imposed by the Assessing Officer and confirmed by the CIT(A) is in respect of the following items of income :

Rs.

1. Wrong claim made under S. 35CCA

7,50,000

2. Addition on account of under valuation of closing stock

48,543

3. Commission payments to Shri B.L. Parikh proprietor M/s. Sri Traders of Jaipur

8,64,102

4. Addition in respect of loan from Shri A.K. Gupta

50,000

In respect of item No. 1 Penalty has been imposed at 200% of the tax sought to be evaded. In respect of item Nos. 2, 3 and 4 penalty has been imposed at 150% of the tax sought to be evaded. The addition of Rs. 8,64,102 and Rs. 50,000 have been deleted by the Tribunal vide order dt. 31st July, 1991 in ITA No. 447/Del/88 asst. yr. 1983-84. Penalty in respect of these two items is, therefore, liable to be deleted. We direct accordingly.

11. In respect of penalty relating to under valuation of closing stock amounting to Rs. 48,543 we find that in the preceding year, i.e., for asst. yr. 1982-83 addition of Rs. 63,163 had been made on account of under valuation of closing stock. During the year under appeal, the addition of Rs. 48,543 was made by the Assessing Officer. The CIT(A) has directed to readjust the opening stock by giving credit for a sum of Rs. 63,163 being the addition made in the preceding year on account of closing stock for that year. As a result of the appellate order, there would be reduction of income as against addition made by the Assessing Officer on account of valuation of closing stock. Considering the facts and circumstances of this case, we are of the view that penalty under S. 271(1)(c) in regard to sum of Rs. 48,543 is not warranted.

12. We are thus left with the issue relating to levy of penalty in respect of sum of Rs. 7,50,000. As is clear from the facts stated elsewhere assessed had made a claim in the original return of income filed on 14th June, 1983 under S. 35CCA in respect of sum of Rs. 7,50,000 which was claimed to have been donated to HACP Rural Development Association, Hyderabad. On 8th Nov., 1983 assessed filed a revised return in which the aforementioned claim under S. 35CCA amounting to Rs. 7,50,000 was withdrawn. therefore, the fact that the claim in regard to Rs. 7,50,000 under S. 35CCA made in the original return was a wrong claim, cannot be disputed. The crucial question, however, for our consideration is as to whether the claim made in the original return by the assessed was a bona fide claim. If it is found that the claim made by the assessed in the original return was a bona fide claim then the mere fact that the claim was wrong would not be sufficient to uphold the levy of penalty. If on the other hand, it is found from the material on record that the claim made in the original return was not bona fide, then mere filing of a revised return by the assessed would not mitigate the default of the assessed. With a view to ascertain as to whether the claim made by the assessed in the original return was a bona fide claim it is material to find out as to whether the revised return was filed voluntarily or was it filed under compulsion of circumstances. We do not have direct evidence either in favor or against the assessed. We have, therefore, to analyze the facts and circumstances of this case and decide the issue on the basis of preponderance of probabilities.

13. assesseds claim is that it had made a bona fide claim in the original return as it had sincerely donated a sum of Rs. 7,50,000 to HACP Rural Development Association, Hyderabad. Receipts had been issued in respect of the donations and assessed had no reasons to suspect such receipts to be bogus. It is further claimed that the assessed filed the revised return in its earliest opportunity on having discovered that the donations had not reached the association. The revised return as per assesseds version had been filed voluntarily without any compulsion or fear.

14. On the other hand, Revenues case is that assessed had consciously made false claim at the time of filing of the original return and that it was only when substantial material regarding the bogus nature of donations had come in the

possession of the Department that the assessed filed revised return with the sole purpose of trying to escape the rigours of penalty and prosecution. We have to consider the material on record to test the claim of the rival parties.

15. The details of cheques issued in regard to the amount of Rs. 7,50,000 claimed by the assessed under S. 35CCA on account of donation paid to HACP Rural Development Association, Hyderabad are as under :

Cheque No.

Date

Amount (Rs.)

Drawn on

899101

28th June, 1982

1,00,000

SBI, Jaipur, South

899102

28th June, 1982

1,00,000

SBI, Jaipur, South

899103

28th June, 1982

1,00,000

SBI, Jaipur, South

199123

29th June, 1982

2,50,000

SBI, Jaipur, South

335433

29th June, 1982

1,00,000

P&SB;, New Delhi

335434

29th June, 1982

1,00,000

P&SB;, New Delhi

As is seen from details given above, four cheques have been drawn on the same bank, namely, State Bank of India, Jaipur South. Three cheques are dt. 28th June, 1982 for Rs. 1 lakh each whereas the fourth cheque is dt. 29th June, 1982 for a sum of Rs. 2,50,000. These four cheques admittedly had not been marked as account payee. The other two cheques for Rs. 1 lakh each have been drawn on P&SB;, New Delhi. These cheques were also dt. 29th June, 1982 and had initially been marked as account payee but altered as crossed. Certain important question do arise here for which the answers are to be searched from the material on record. Why did the assessed issue four cheques instead of only one on the same bank when these cheques had been issued on the same day, i.e., 29th June, 1982 as is clear from receipts purportedly issued for these cheques by HACP Rural Development Association, Hyderabad. (Refer to page 98 of the paper book. Para 4).

We had asked the learned counsel for the assessed the reason for issuing separate cheques for the amount of donations. It was stated that sufficient funds were not available in the same bank and, therefore, assessed has issued separate cheques on different banks. This is factually incorrect. A sum of Rs. 5,50,000 had been drawn on the SBI, Jaipur South whereas sum of Rs. 2 lakhs on P&SB; Bank. Rs. 5,50,000 was available in the same bank for which four cheques have been issued. Similarly in respect of Rs. 2 lakhs two separate cheques have been issued without any satisfactory reasons.

16. Another important factor that assumes importance in this case is as to why assessed did not mark these cheques as account payee. The fact that in respect of two cheques account payee words were struck out also raises a strong doubt as to the intention of the assessed at the time of making the donations. The fact that assessed had in the past made donations of meagre amounts by account payee cheques has not been disputed before us. No Explanationn is forth coming from the assessed as to why these cheques has not been marked as account payees. The circumstances under which these cheques had been issued do not support the theory that assessed had in all fairness sought the donation to reach HACP, Rural Development Association, Hyderabad.

17. Another important aspect of the matter is that if the assessed was unaware of the fact that the donations had not reached the donee trust when did the assessed come to know about it and what was the immediate reaction to such discovery. In this connection, it would be relevant to note the events having taken place from the date of filing of the original return till the date of the filing of the revised return. Original return had been filed on 14th June, 1983. On 4th Sept., 1983, there was a public notice in the newspaper Economic Times on behalf of Hastimal Sancheti Memorial Trust informing the public that some persons were collecting the donations on their behalf without any authority. On 13th Sept., 1983 statement of Shri Vipin Mehra had been recorded by the ADI (Inv). In this statement Shri Vipin Mehra had categorically stated that no donations had been collected by him on behalf of Hastimal Sancheti Memorial Trust. The statement of Shri P. P. Verma (Prem Prakash Verma) had also been recorded on 13th Sept., 1983. In response to a question as to whether he was connected with Hastimal Sancheti Memorial

Trust, or Shri Vipin Mehra or Poona Medical Foundation. Shri Verma had stated as under :

'During the last two years Shri Prem Prakash Executive Director, Sri Ram Associates of the DCM Group had approached me regarding donations to such trusts who were willing to return back a substantial percentage of the donation in cash back to the donors. This percentage was negotiated between the donor and trustee between 50 to 70%. The donor contacts a broker who arranges for the transaction with the trustees. The broker is paid 1% on total transaction each from the donor and the trustees. It is the responsibility of the broker to open the bank account, exchange the drafts and pay both the trusts and the donors the agreed amounts.' (PB 18)

On 14th Sept., 1983 search and seizure operations carried out at M/s. Inalsa P. Ltd. Certain documents relating to donations of Rs. 30 Lakhs in the name of Hastimal Sancheti Memorial Trust had been seized. Shri S. C. Gupta, Dy. Manager (Accts.) had stated as under :

'I have not been able to furnish copies of Board Resolution regarding donation of Rs. 30 lakhs to Hastimal Sancheti Memorial Trust, 16, Shivajinagar, Pune-411005 and correspondence regarding this donation is with the trustee. I undertake to furnish this information by 20th Sept., 1983.' (PB. 29)

On 16th Sept., 1983 Shri Deepak Singh (One of the partners of the appellant firm) had written a letter to Shri Prem Prakash. In this letter Shri Prem Prakash had been informed about a registered letter having been sent to Shri Vipin Mehra. Shri Prem Prakash had been asked to get a valid income-tax exemption certificate from the party Along with adequate proof that donation had actually been received by the appropriate trust authorities. It is important to note that an alternative was also suggested to Shri Verma that the donation may be returned so that the matter could be closed. The letter is at page 31 of the paper book. At page 32 is a letter dt. 16th Sept., 1983 written by Shri K. S. Kalra, Chief Executive (another partner of the appellant firm) to Shri Vipin Mehra regarding donations of Rs. 10 lakhs made to Hastimal Sancheti Memorial Trust. In our view, following extract from the letter may be relevant for deciding the issue :

'Recently a team from the Directorate of Revenue Intelligence has visited the offices of Inalsa and there we have been asked to furnish details of the donations made to this trust from Inalsa. The discussion that this team has had with Inalsa shows that there is something wrong about the whole transaction. Some doubts have also been cast about the authenticity of receipts provided by you in Inalsa. We hope that the donation of Rs. 10 lakhs from this company has actually reached the trust and the receipts that you have given to us are genuine. In any case, you are requested once again go urgently get us a reconfirmation from the Secretary of the trust that our donation of Rs. 10 lakhs has, reached them.' (PB. 32)

At page 32A is the letter dt. 21st Sept., 1983 written by Shri Prem Prakash, Executive Director of DCM Group of companies, which is addressed to Shri Deepak Singh, partner of the firm. Following extract from the letter, in our view, is relevant :

'I am in receipt of your letter of the 5th September and your letter of the 16th Sept., 1983 Along with a copy of your letter addressed to Mr. Vipin Mehra.

As I had explained to you during our personal meeting, Mr. Mehra had himself been introduced to me only during the beginning of this year. He has appeared to be an honest man and whatever investigations I had made did not lead me to doubt any of his intentions. I had also checked up the affairs of the Hastimal Trust and I had found that the Trust was doing good work. I had, therefore, recommended to you that you may donate any sums to them in case you so desire. The cheques which you had sent to me as a donation to the Hastimal Trust were handed over by me to Mr. Vipin Mehra for onward transmission to the trust authorities. The receipts given by Mr. Mehra were subsequently sent back to you for your records.

It appears that there has indeed been some confusion between Mr. Mehra and the trust authorities and that Mr. Mehra has not actually deposited the money with the trust authorities.

I am glad to inform your that I have been able to persuade Mr. Mehra to return your donations and I am enclosing herewith a letter dt. 20th Sept., 1983 from him

wherein he has mentioned that he is returning the money. A draft for Rs. 10 lakhs given to me by Mr. Mehra in full and final settlement of this matter is also enclosed.'

On 26th Sept., 1983 statement of Shri H. C. Goel, Accountant, State Bank of Patiala Shardanand Market, New Delhi has been recorded, which is at PB 33. Shri Goel has stated that eight accounts stated in the list including that of Vipin Kumar of Model Town had been opened on the reference of Shri Prem Prakash, Executive Director of DCM Group of Companies. Shri Goel has also stated that he met Shri Prem Prakash personally four or five times in his office at DCM building, Bara Hindu Rao, Delhi for securing deposits.

19. On 8th Oct., 1983 it seems that the assessed has for the first time asked Shri Prem Prakash to verify the donation having reached HACP Rural Development, Hyderabad. On 10th Oct., 1983 Shri Prem Prakash seems to have acknowledged the letter of Shri Kalra informing that the cheques had been given to one of the representatives of the Association who had furnished the receipts. The name of the representative, however, has not been disclosed in the letter. The relevant extract from this letter is reproduced hereunder :

'Actually, the cheques had been handed over by me to one of the representatives of the association and he had furnished me with the receipts which I had in turn given back to you.

I am trying to get in touch with this gentleman to obtain re-confirmation from the Rural Development Association, that the amount had actually reached them. I am asking him to give me the permanent account number of the association and to also obtain confirmation from the Secretary of the association indicating the genuineness of the donations.' (PB 36)

On 15th October Shri Prem Prakash has written to Shri Kalra informing that the donation cheques had been handed over to Shri P. P. Verma, who had provided the receipts from the association which in turn had been sent to Shri Kalra for his record. In this letter it was further written by Prem Prakash that Shri P. P. Verma has now informed that the cheques had actually been handed over by him to

someone else. Shri Prem Prakash further confirmed that the payments had not actually reached the association and that there was some confusion. Following para from the letter is reproduced for the sake of reference :

'Shri P. P. Verma also indicated that the payment did not actually reach the association and that there has been some confusion along the line. I am trying to go deeper into the matter to find out what actually happened but from P. P. Verma's conversation it is clear that the donation has not reached the right source.'
(PB. 37)

At page 39-40 is a letter written by Chief Executive of Varun Enterprises (assessed) to Shri P. P. Verma. In this letter Shri P. P. Verma was informed about the handing over of the donation cheques in the name of HACP Rural Development Association and the receipts having been issued to Shri Prem Prakash. Shri Verma was informed about the IT authorities making enquiries about these donations and that Shri Prem Prakash had informed the assessed about non receipt of donations by HACP Rural Development Association. By this letter Shri Verma was asked to clarify within 48 hours as to what had actually happened lest legal action was threatened to be taken. In response to this letter Shri P. P. Verma has replied by means of a registered letter, which is at page 51 of the paper book. Similar letter has been written by Shri Vipin Mehra which is at page 50 of the paper book. The contents of this letter are reproduced hereunder :

'This has reference to your various letters addressed to me by your various companies and also my telegram dt. 24th Oct., 1983 contents of which read as follows :

'Contents of the letters dt. 20th Oct., 1983 are absolutely false. Do not conceal the facts. Detail reply follows - Vipin Mehra.'

You are concealing the reality and have distorted the entire facts and circumstances to save your own skin and that of the other officials of your various companies. This is being done to shift the responsibility of others upon my shoulders for no fault on my part.

As per instructions from you and your officials the amounts of the various cheques and drafts of your concerns favoring various trusts were got encased and the amount of the same paid back to the drawers as soon as the amounts were withdrawn from the respective banks. I have not done anything wrong and all the transactions have been taking place under your guidance and instructions and that of the various responsible officials of yours and your other related companies. The allegation of handing over the alleged receipts by me is false and fabricated.

Under coercion and undue influence certain letters and writings have been being procured from me from time to time to cover up your own acts and that of the various officials of your aforesaid companies. Now it appears that you and the other officials of the company in league with each other intend to misuse the same just to wriggle out of the whole show. The entire matter requires thorough probe and investigation by an independent agency to bring home the truth and to unearth the whole episode. I hope that you should not have any hitch or hesitation for his fair suggestion.

I am a poor innocent man and I hope that you would not take advantage of your position by concealing the true facts for your personal ends and would avoid playing with others at the behest of money and political power. Such type of attitude may be intolerable. I hope that better counsel would prevail and you would not precipitate the matter.'

On 28th Oct., 1983 a letter has been written by Shri Deepak Singh to Mr. Prem Prakash from Inalsa. In this letter Shri Prem Prakash was asked to sort out the matter with Mr. Vipin Mehra and Shri P. P. Verma so that further harassment is saved.

18. At page 54 of the paper book is a letter written by Shri Prem Prakash addressed to Shri Deepak Singh. This is in response to the letter dt. 28th Oct., 1983. Following relevant para is extracted from the letter :

'I have discussed the issue with both of them and I am happy to inform you that they have agreed in principle to refund the balance amount due to you. I am constantly following up with them and I hope that within the next few days I shall

be able to get the necessary action.

I would, therefore, suggest that you do not proceed with any legal complaint for the next few days. You would kindly appreciate that it would be more advisable to obtain refund from Mr. Vipin Mehra and Mr. P. P. Verma rather than entering into litigation.'

At page 55/56 is another letter from Shri Prem Prakash addressed to Shri Deepak Singh informing the latter that Shri Vipin Mehra has furnished affidavits admitting total responsibility for encashment of all cheques and drafts and that he was agreeable to repay the amount. Eight affidavits sworn by Shri Vipin Mehra were also enclosed. These related to the donations made by the Group, the details of which as contained in this letter are as under :

- Inalsa

Rs. 30 lakhs to Sancheti Trust; amount already refunded by him.

Rs. 3 lacs to Morarji Trust.

- Varun

Rs. 10 lacs to Sancheti Trust; amount already refunded by him in full.

Rs. 7.5 lacs to HACP Association.

- Karna Inds.

Rs. 25,000 to HACP Association.

- Karna Commercial

Rs. 25,000 to Morarji Trust

- Your HUF

Rs. 5 lacs to Rama Krishna Mission

- Mr. Kalra/Family

Rs. 1,02,000 to Rama Krishna Mission

Rs. 20,200 to Research Institution for Graphic Arts.

The forwarding letter to the affidavits is at page 57A of the paper book. The brief contents are reproduced hereunder :

'Enclosed herewith the various affidavits as required by you in connection with the donation.

I hope these affidavits will not be misused by you in any manner whatsoever. Please confirm the same.'

19. On 8th Nov., 1983 assessed has filed a revised return withdrawing the claim.

20. Some other events taking place before the filing of the return by the assessed may also be relevant to be indicated :

On 14th Sept., 1983 search and seizure operation had taken place in the premises in Inalsa P. Ltd. and enquiries regarding the donations made by the IT Department. Inalsa P. Ltd. is a company with the following directors :

1. Mr. K. S. Kalra

2. Mr. Deepak Singh

assessed, namely, Varun Enterprises is a partnership concern constituted of the following partners :

1. K. S. Kalra & Sons, HUF with 11% share (represented by Shri K. S. Kalra).

2. Shri Deepak Singh & Family, HUF with 67% share (represented by Shri Deepak Singh).

3. Smt. Harish Kalra wife of Shri K. S. Kalra with 22% share.

21. It is evident from the constitution of the assessed firm that Inalsa P. Ltd. and assessed firm are closely associated. In fact assessed has paid a rent of Rs.

6,000 to Inalsa P. Ltd. for the use of premises. This is evident from para 7 of the assessment order. The Assessing Officer had disallowed the payment of rent to Inalsa on the ground that assessed was having office premises at Rajindra Place, New Delhi. The CIT(A) confirmed the disallowance. Before the Tribunal assessed claimed that Shri K. S. Kalra and Shri Deepak Singh were performing the duties of the assessed firm while at Inalsa and the remuneration of Rs. 6,000 paid to peon for attending to the partners visiting that building was a business expenditure. The Tribunal in ITA No. 447/Del/1988 asst. yr. 1983-84 in para 10 of the order has recorded a finding as under :

'In our opinion, there is no merit in this ground by the assessed. The partners of the assessed-company are also the directors of Inalsa. They, therefore, sit in both offices, i.e., the office of the firm as well as Inalsa. The affairs of both the institutions, i.e., firm and the company are being attended by them while sitting at either of the places. In such circumstances, we are of the opinion that the expenditure of Rs. 6,000 cannot be considered as for business consideration. The ground of appeal is, therefore, rejected. We are in agreement with the detailed reasons given by the CIT(A).'

The purpose of reproducing the relevant para from the order of the Tribunal is to demonstrate that the two of the partners of this firm were performing the duties as partners while sitting in the office premises of Inalsa, the premises of which was raided on 14th Sept., 1983. Another fact, i.e., to be borne in mind is that Shri Prem Prakash is a close business associate of the assessed. He is director of the Meghdoot P. Ltd., a holding company of Inalsa P. Ltd. This is stated by the assessed in para 8 of letter by the assessed to the ITO (PB 99/100) dt. 21st June, 1986. Between 12th Oct., 1983 to 19th Oct., 1983 the statement of Governors of Parvati Charitable Foundation have been recorded by the Assessing Officer. A perusal of these statements indicate that Shri Prem Prakash was in fact running the affairs of Parvati Charitable Foundation. Assessing Officer in his assessment order has pointed out that the cheques issued by the assessed in the name of HACP Rural Development Association, had been endorsed in favor of Parvati Charitable Foundation and had been credited in the bank account of the said trust. The withdrawals had been made from this bank account at the behest of Shri

Prem Prakash.

22. On 8th Nov., 1983 assessed has filed a revised return withdrawing the claim on account of donations to HACP Rural Development Association. As is seen from the facts stated two partners of this firm are the directors in Inalsa P. Ltd. From the correspondence on record, it is evident that assessed was conscious of IT Department making enquiries about the nature of donations made by the DCM Group in all amounting to Rs. 57,22,200. The statements of Shri P. P. Verma and Shri Vipin Mehra suggesting involvements of the assessed for claiming a bogus donations was also known to the assessed. On perusal of the statements on record of various persons it is clear that there was sufficient material with the Department to establish that the donations purportedly made by the Inalsa P. Ltd. were not genuine. assessed has filed the revised return on 8th Nov., 1983, which is after the date of search. Considering the fact that Shri K. S. Kalra and Shri Deepak Singh are the directors of Inalsa P. Ltd. and were fully conscious of the enquiries made by the Department and the material collected by the latter it cannot be said that the filing of the revised return on 8th Nov., 1983 was voluntary.

23. The contention on behalf of the assessed that Shri Prem Prakash had persuaded the assessed to make the donations to various institutions on behalf of the DCM Group and that the assessed intended to make the donations for a reasonable cause, cannot be accepted in the face of evidence on record. One has to remember that Shri Prem Prakash is the close business associate of the assessed and the DCM Group. It has been established from records that the cheques issued by the assessed in the name of HACP Rural Development Association, Hyderabad had been deposited in the bank account of Parvati Charitable Foundation. Shri Prem Prakash has filed an affidavit which is at pages 115 and 116 of the paper book before the Revenue authorities stating that he was instrumental in introducing authorised representative to Shri Kalra and that the former was not known to the assessed. Shri Vipin Mehra and Shri P. P. Verma, we must mention had filed affidavits in support of assesseds version. Later on these persons have reiterated their earlier stands and withdrawn the statements made by way of affidavits. The question before us is not as to whether the statements of Shri Vipin Mehra and Shri P. P. Verma are to be accepted as correct as this is not

the only evidence on the basis of which rival contentions revolve around. When assessed had made a claim in the original return which undisputedly was wrong it is for them to establish that the claim made was a bona fide claim. What is the evidence in favor of the assessed. The statement of Shri Prem Prakash, who had stated that Shri Vipin Mehra and Shri Prem Prakash Verma has been introduced by him to the assessed. It is enough to exonerate the assessed from the responsibilities of discharging the onus to prove that the claim was a bona fide claim. As mentioned earlier Shri Prem Prakash is the close business associate of the assessed and continues to be so even now. We are searching answers to various questions from the material on record and in fact we had asked the learned counsel for the assessed to enlighten us in respect of some of the pondering questions.

24. Why did not assessed mark the cheques issued in the name of HACP Rural Development as 'account payee'

25. Why was endorsement as account payee struck out on two cheques There is no Explanationn from the assessed. In the absence of any Explanationn from the assessed in this regard the presumption that assessed facilitated encashment of cheques by persons other than the payee would be justified.

26. What was the conduct of the assessed on becoming suspicious about the donations not having reached the donee

27. In response to our query the learned counsel for the assessed confirmed that assessed did not write to HACP Rural Development Association at any stage requesting for confirmation of the donations having been received or otherwise.

28. Why has assessed refrained from writing to the donee association. On 4th Sept., 1983 assessed claims to have become suspicious about the nature of donations made. If assessed had nothing to hide, enquiry from the donee trust would be the first step so as to ascertain the status of donations. This assessed did not do. There is no Explanationn for this omission.

29. Another factor that assumes importance in this case is as to why did assessed refrain from lodging a complaint against the culprit if a huge amount of donations meant for public/charitable purposes was admitted to be misappropriated. The correspondence between assessed and Shri Prem Prakash suggests that lodging of complaint was deferred so that the money could be recovered. Now that the assessed claims to have recovered the money what prompted the assessed from lodging a criminal complaint against Shri Vipin Mehra, Shri P. P. Verma and against Shri Prem Prakash. It is known to the assessed that the cheques issued in the name of HACP Rural Development Association had been deposited in the bank account of Parvati Charitable Foundation of Which Shri Prem Prakash was the Governor. There is no satisfactory Explanationn as to how the cheques had been deposited in Parvati Charitable Foundation when these were meant to reach HACP Rural Development Association. No complaint has been lodged against Shri Prem Prakash. On the contrary Shri Prem Prakash continues to enjoy the patronage of DCM Group. He has signed the return of income for asst. yr. 1991-92 in the case of Mohan Madan Lal Sri Ram Investment Co. of DCM Group. Another fact worthy to note is that but for the donations of Rs. 57,20,200 no substantial donation has been made for public or charitable purposes. We asked the learned counsel for the assessed that after recovery of the amount from the alleged culprits did the assessed think of making any donations for public or charitable purposes. The learned counsel stated that he is not in a position to confirm any donations having been made by the assessed of substantial amounts out of the recovery made.

30. The factors that we have indicated above have important bearing upon the issue in hand.

31. In this materialistic world one cannot rule out the possibility of being cheated but we fail to understand as to why a person who claims to have been cheated does not bother to lodge a complaint against the culprit.

32. In the matter of penalty under S. 271(1)(c) one has to consider the preponderance of probabilities on order to arrive at a fair conclusion. One has to see whether the Explanationn furnished by the assessed was plausible. Does the

evidence on record create a belief in favor of the assessed is very crucial for determination of the issue. If it is found that the evidence produced creates a belief in favor of the assessed then in the penalty proceedings the benefit of doubt has got to be given to the assessed. Looking at the material on record and the Explanation furnished by the assessed, we are unable to give the benefit of doubt to the assessed. Preponderance of probabilities are against the assessed. The Explanation of the assessed does not seem to be plausible. The IT Department having initiated proceedings prior to filing of the revised return against the Inalsa P. Ltd. of which the two partners are the directors, it cannot be said that the filing of the revised return by the assessed was voluntary. therefore, mere filing of the revised return filed by the assessed does not exonerate it from the levy of penalty in regard to the claim of deduction under S. 35CCA. The assessed having failed to establish that the claim made was a bona fide claim, penalty under S. 271(1)(c), in our view, is justified.

QUANTUM

33. Assessing Officer has imposed a penalty at 200% of the tax sought to be evaded which is the maximum provided under law. Since penalty has not been confirmed on the basis of conclusive evidence but on the basis of preponderance of probabilities weighing against the assessed, we are of the considered view that penalty at 100% of the tax sought to be evaded would be reasonable and justified. We accordingly reduce the penalty in respect of sum of Rs. 7,50,000 to 100% of the tax sought to be evaded.

34. In respect of other three items, i.e., Rs. 48,543 Rs. 8,64,102 and Rs. 50,000 penalty at the rate of 150% of the tax sought to be evaded was imposed by the Assessing Officer, which we have deleted in full.

35. Appeal of the assessed is partly allowed.

ITA No. 3607/Del/1987 :

36. A penalty under S. 273 has been imposed by the Assessing Officer for assessed having furnished an estimate of advance tax payable by him which he

knew or had reason to believe to be untrue. Learned counsel for the assessed contended that the result of this penalty is consequential to the appeal against levy of penalty under S. 271(1)(c). We have deleted the penalty under S. 271(1)(c) in respect of three items of income as the additions were deleted by the Tribunal in quantum appeal. In relation of sum of Rs. 7,50,000, we have upheld the levy of penalty under S. 271(1)(c). Since the income of the assessed has substantially been reduced, we direct consequential relief to the assessed and for recalculation of the penalty on the basis of tax as finally assessed.

37. Appeal of the assessed is partly allowed.

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