

Cit Vs. Manilal Tarachand

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Court : Gujarat

Decided On : Sep-26-2001

Reported in : (2001)170CTR(Guj)466

Appeal No. : IT Ref. No. 95 of 1988 26 September 2001 A.Y. 1973-74

Appellant : Cit

Respondent : Manilal Tarachand

Advocate for Pet/Ap. : Akil Kureshi with Manish R. Bhatt, *for the Revenue* R.K Patel, *for the Assessee*

Judgement :

ORDER

Assessing officer failed to initiate penalty proceeding under section 271(1)(c)--
Capital gains not disclosed by assessee in relevant assessment year

Catch Note:

The assessing officer assessed assessee under section 143(3) read with section 147(a), in reassessment order, assessing officer brought to tax long-term capital gains, in relation to compensation received, in land acquisition proceedings, which assessee had not disclosed in his return of income for year under consideration--
The assessee disclosed long-term capital gain in assessment year 1975-76 when compensation amount was received by assessee--Commissioner, initiated

proceedings under section 263 stating that assessment order framed under section 143(3) read with section 147, was erroneous and prejudicial to interest of revenue as Income Tax Officer had failed to mention point regarding initiation of penalty proceedings under section 271(1)(c) on account of concealment of income or furnishing inaccurate particulars of income--Commissioner did not accept submissions made on behalf of assessee and relying upon decisions of Madhya Pradesh High Court in the cases of Addl. CIT v. Kantilal Jain (1980) 125 ITR 373 (MP) and Addl. CIT v. Indian Pharmaceuticals (1980) 123 ITR 874 (MP) held that it was open to him to act under section 263 when Income Tax Officer had failed to initiate penalty proceedings--Not proper--Assessee was under a belief that he would be liable to capital gains tax only on receipt of compensation and accordingly had shown liability to capital gains tax in his return of income for assessment year 1975-76--Though for purposes of reassessment proceedings, Income Tax Officer would be within his powers to initiate proceedings under section 147 for assessment year 1973-74, it is not possible to hold that penalty under section 271(1)(c) could be levied for said assessment year--As no penalty was leviable on the assessee, the Commissioner could not have assumed jurisdiction under section 263.

HELD

In light of the facts as recorded by the Income Tax Officer in the assessment order, this is not a case where penalty could be imposed on the assessee on the charge of either concealment of income or furnishing inaccurate particulars of income. The dispute in the assessment, between the assessee and the department, was to the effect as to in which year the compensation received by the assessee was taxable. It appears that assessee was under a belief that he would be liable to capital gains tax only on receipt of compensation and accordingly had shown liability to capital gains tax in his return of income for assessment year 1975-76 Though for purposes of reassessment proceedings, Income Tax Officer would be within his powers to initiate proceedings under section 147 for assessment year 1973-74, it is not possible to hold that penalty under section 271(1)(c) could be levied for said assessment year. In view of this fact situation, it is not necessary to enter into the larger controversy regarding the

jurisdiction of the Commissioner, namely, whether the Commissioner could act under section 263 to direct the Income Tax Officer to initiate penalty proceedings under section 271(1)(c). On the facts stated hereinbefore, as no penalty was leviable on the assessee, the Commissioner could not have assumed jurisdiction under section 263. Therefore, the Tribunal's ultimate conclusion that the Commissioner's order under section 263 could be set aside is right in law.

Application:

Also to current assessment year.

Decision:

In favour of assessee.

Income Tax Act 1961 s.263

In the Gujarat High Court M.S. Shah & D.A. Mehta, JJ.

D.A. Mehta, J.

The Tribunal, Ahmedabad Bench 'A' has referred the following question for the opinion of this court :

'Whether, the Tribunal is right in setting aside the order made by the Commissioner under section 263 of the Income Tax Act, 1961 ?'

2. The assessee is an individual. For assessment year 1973-74 the relevant accounting period is S.Y. 2028. The Income Tax Officer assessed the assessee under section 143(3) read with section 147(a) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). In the reassessment order, the Income Tax Officer brought to tax long-term capital gains in relation to the compensation (including solatium) received, in the land acquisition proceedings, which admittedly the assessee had not disclosed in his return of income for the year under consideration.

3. However, it is pertinent to note that the amount received by the assessee had been returned by the assessee in his return of income for assessment year 1975-76. In fact, the Income Tax Officer initiated reassessment proceedings based on this disclosure made by the assessee for assessment year 1975-76.

4. The Commissioner, Rajkot, initiated proceedings under section 263 of the Act stating that the assessment order framed on 8-3-1985, under section 143(3) read with section 147 of the Act, was erroneous and prejudicial to the interest of the revenue as the Income Tax Officer had failed to mention the point regarding initiation of penalty proceedings under section 271(1)(c) of the Act on account of concealment of income or furnishing inaccurate particulars of income. The assessee resisted the notice for revision on two-fold counts. Firstly, it was contended that the provisions of section 263 did not empower the Commissioner to assume jurisdiction on account of failure to initiate penalty proceedings at the time of the assessment. Secondly, it was contended that in view of the facts and circumstances of the case, it could not be said that the assessee had concealed or furnished inaccurate particulars of income for which penalty proceedings could be initiated. The Commissioner did not accept the submissions made on behalf of the assessee and relying upon the decisions of the Madhya Pradesh High Court in the cases of Addl. CIT v. Kantilal Jain : [1980]125ITR373(MP) and Addl. CIT v. Indian Pharmaceuticals : [1980]123ITR874(MP) held that it was open to him to act under section 263 of the Act when the Income Tax Officer had failed to initiate the penalty proceedings.

The Commissioner also further held that the assessee had furnished inaccurate particulars of income insofar as he had failed to disclose the fact of the property being notified for the purposes of acquisition and thus becoming entitled to compensation.

5. The assessee went in appeal before the Tribunal and the Tribunal relying upon the decisions in the cases of CIT v. Narpat Singh Malkhan Singh : [1981]128ITR77(MP) , Addl. CIT v. J.K. DCosta : [1982]133ITR7(Delhi) and CIT v. Keshrimal Puranmal (1985) 48 CTR (Raj) 61 came to the conclusion that the Commissioner was not justified in exercising his revisionary jurisdiction under

section 263 of the Act. The Tribunal also took note of the fact that against the aforesaid decision of the Delhi High Court in case of J.K. DCosta (supra), the SLP filed by the department had been dismissed by the Supreme Court in : [1984]147ITR1(MP) .

6. Though on merits the arguments were raised before the Tribunal that even on facts the penalty was not leviable, the Tribunal has not recovered any decision because, according to the Tribunal, the controversy before it was of a limited nature and since it has nothing to do with the actual imposition of penalty under section 271(1)(c) of the Act, it was not open to it to give any finding on merits of the matter.

7. We have heard Mr. Akil Kureshi, learned counsel for the revenue and Mr. R.K. Patel, learned counsel for the assessee.

8. In light of the facts as recorded by the Income Tax Officer in the assessment order, we feel that this is not a case where penalty could be imposed on the assessee on the charge of either concealment of income or furnishing inaccurate particulars of income. The dispute in the assessment, between the assessee and the department, was to the effect as to in which year the compensation received by the assessee was taxable. It appears that the assessee was under a belief that he would be liable to capital gains tax only on receipt of compensation and accordingly had shown the liability to capital gains tax in his return of income for assessment year 1975-76. Though for the purposes of reassessment proceedings, the Income Tax Officer would be within his powers to initiate proceedings under section 147 of the Act for assessment year 1973-74, it is not possible to hold that penalty under section 271(1)(c) of the Act could be levied for the said assessment year.

9. In view of this fact situation, we feel that it is not necessary to enter into the larger controversy regarding the jurisdiction of the Commissioner, namely, whether the Commissioner could act under section 263 of the Act to direct the Income Tax Officer to initiate penalty proceedings under section 271(1)(c) of the Act, On the facts stated hereinbefore, we hold that as no penalty was leviable on the assessee, the Commissioner could not have assumed jurisdiction under section

263 of the Act. Therefore, the Tribunals ultimate conclusion that the Commissioners order under section 263 of the Act could be set aside is right in law though for the reasons given by us. We do not express any opinion in relation to the reasons which weighed with the Tribunal. The question referred to us is, therefore, answered in affirmative i.e. in favour of the assessee and against the revenue.

10. The reference is disposed of accordingly with no order as to costs.

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