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Court : Chennai

Decided On : Nov-19-1957

Reported in : [1958]33ITR670(Mad)

Appeal No. : Writ Petition No. 28 of 1956

Appellant : Artisan Press Ltd.

Respondent : income-tax Appellate Tribunal and Another.

Judgement :

RAJAGOPALA AYYANGAR, J. - Three points have been urged by the learned counsel for the petitioner in support of the challenge to an order of the Income-tax Appellate Tribunal imposing a penalty under section 28(1)(c) of the Income-tax Act impugned in this writ petition : (1) that the Appellate Tribunal was functus officio on the date when the proceedings for the levy of penalty were initiated; (2) that there was no identity between the party against whom the penalty was levied and the assessee who submitted the incorrect return in which the correct particulars of income were not disclosed; and (3) that the order of the Tribunal levying the penalty did not satisfy the requirements of a judicial order.

The order impugned was one by the Income-tax Appellate Tribunal which imposed a penalty of Rs. 1,000 on the petitioner Messrs. Artisan Press Limited. The concerned assessment year was 1953-54 and the company had preferred an appeal to the Income-tax Appellate Tribunal felling itself aggrieved by the

assessment order passed by the officer and confirmed by the Appellate Assistant Commissioner. The appeal was heard on October 6, 1955, and the hearing concluded on October 7, 1955. One of the items of dispute raised before the Tribunal related to a claim by the assessee to deduct certain commissions said to have been paid, in computing its total income. This payment had been disallowed by the departmental authorities on legal grounds and the propriety of this disallowance was challenged before the Tribunal. At the hearing of the appeal however the members of the Tribunal examined the accounts of the assessee for the purpose of finding out whether the payment had in fact been made. In passing, it may be mentioned, that the payment was said to have been made to one of the directors of the company by name Ponnambalam. The Tribunal examined the ledger and finding that the entry in relation to this payment was by way of interpolation, directed the assessee to produce the cash book and supporting vouchers. All these were produced on October 7, 1955, on which date the Tribunal concluded the hearing and completed their order under section 33(4). In the course of this order the Tribunal recorded :

'As, in our opinion, the assessee has concealed its income and has deliberately furnished inaccurate particulars thereof in the return for the assessment year 1953-54 in the manner set out above, a notice under section 28 is issued calling on the assessee to show cause why a penalty under section 28(1)(c) should not be imposed.'

The order under section 33(4) which, as stated before, was dated October 7, 1955, was despatched to the assessee and was served on him on October 13, 1955. Meanwhile in pursuance of the direction contained in the paragraph which I have extracted a notice under section 28(3) was despatched on October 10, 1955, and was served on the assessee on October 10, 1955, itself. The assessee (the petitioner here) appeared in answer to the notice and submitted the three objections which I have mentioned in the opening of the judgment to the imposition of the penalty. These were overruled and the Tribunal proceeded to impose the penalty of Rs. 1,000. Hence this petition.

It would possibly be convenient to dispose of the second and third objections before dealing with the first.

The party who submitted deliberately the incorrect return claiming the payment of commission was the Artisan Press Limited. The point urged was that as by the date of the penalty proceeding this company had gone into voluntary liquidation there was no identity between it and the party who submitted the incorrect return. This contention is obviously untenable and was properly rejected. A company exists until dissolution and merely because its activities are reduced and its commercial operations cease and its directors cease to manage it does not mean that it ceases to exist or that it has become transferred into a new entity. It is still a company, an unit of assessment with its identity unchanged.

The second point urged was that the order imposing the penalty did not disclose that the matter of concealment had been considered by the Tribunal bearing in mind the explanation submitted by the company to the notice calling for the assessee's explanation. This again is wholly without substance because nothing more was urged in the answers than an assertion of the reality of the payment. The fact that the Tribunal had *prima facie* satisfied themselves regarding the concealment before the notice under section 28(3) was issued and expressed that satisfaction in their order under section 33(4) could not be a ground for questioning the legality of the order imposing the penalty because on the scheme of the Act and in the very nature of things the notice to show cause should be preceded by *prima facie* satisfaction regarding the concealment. If the Tribunal found that no further explanation was offered at the stage of objection than at the stage of the hearing of the appeal when the entire matter was discussed, they could do nothing else than to repeat their previous order and that is what happened in the present case.

The objection as regards the jurisdiction of the Tribunal to pass the order was rested on the terms of section 28 as explained by the decision of this court in *Sivagaminatha Moopanar & Sons v. Income-tax Officer, II Circle, Mathurai*. The passage relied on read :

'In our opinion the proceedings for the levy of a penalty must be initiated by an authority when such authority was in seisin of the assessment or other proceedings in the course of which it is found that the assessee has brought himself within the mischief of section 28. When once the notice has been issued the jurisdiction of that authority to continue the proceedings is not dependent upon the continuance of other proceedings in the course of which the penalty proceedings came to be initiated.'

The point urged was that the order under section 33(4) was passed on October 7, 1955, when the assessment proceedings before the Tribunal terminated. The notice under section 28(3) was dated October 10, 1955, and on this account it was contended that on the date when this notice was issued the Tribunal had ceased to have jurisdiction to issue the certificate.

The Tribunal rejected this contention by a line of reasoning which I am unable to endorse. They stated as the order under section 33(4) was served on the assessee only on October 13, 1955, the assessment proceedings must be taken to have been continued till that date, and that as the notice under section 28(3) was served on the assessee on October 10, 1955, itself the terms of section 28(1) and the passage in the decision I have extracted earlier were satisfied. This reasoning, however, ignores the fact that the order of the Tribunal under section 33(4) was effective from the date of its issue and did not depend for its validity or operation on its service on the assessee. The date of service on the assessee though it may be relevant for any proceedings such as those under section 66(1), etc., is wholly irrelevant for the matter under discussion. The accident therefore that the order issued on October 10, 1955, was served earlier than the order in the appeal dated October 7, 1955, cannot be any proper basis for holding that the assessment proceedings before the Tribunal continued till October 10, 1955, to enable the Tribunal to take proceedings under section 28 on the assessee.

On the facts of the present case I have reached the conclusion that the penalty proceedings were initiated at a time when the Tribunal was seized of the assessment proceedings. In the first place even in the order under section 33(4) the Tribunal had made it clear that they were issuing a notice under section 28(3)

to the assessee. The matter did not stop with this, for I find from the records of the Tribunal which have been called for in pursuance of the rule nisi issued in this case, that on October 7, 1955, itself they passed a direction to issue notice to the assessee under section 28 in conformity with their order in appeal. No doubt the office prepared a draft of the notice only on October 10, 1955, which after being approved by the members of the Tribunal was despatched on the same day. The order in the notes paper dated October 7, 1955, was in my judgment the initiation of the penalty proceedings. To 'initiate' means 'to originate' or 'to take the first step', and even if the paragraph in the order under section 33(4) which I have extract is not itself the initiation or the first step in the proceedings, the direction to the office to issue a notice on October 7, 1955, was certainly such a step. The terms of section 28(1) were thus satisfied and the order impugned was within the jurisdiction of the Tribunal.

In this view I have not considered it necessary to deal with the other contentions which Mr. Rama Rao Sahib urged in support of the legality of the impugned order.

The petition fails and is dismissed with costs. Counsels fee Rs. 150.

Petition dismissed.

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