

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

ITA.No. 51 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN ITA 778/Coch/2009 of I.T.A. TRIBUNAL, COCHIN
BENCH DATED 30-04-2010

APPELLANT(S)/RESPONDENTS/ASSESSEE:

M/S. MANURAL HUDA TRUST,
EMKE MANZIL, KALLATTUMUKKU, MANACAUD.P.O
TRIVANDRUM, REPRESENTED BY MANAGING TRUSTEE
SHRI. SAMIR BIN KAMAL.

BY ADVS. SRI. T.M. SREEDHARAN (SR.)
SMT. BOBY M. SEKHAR
SMT. DIVYA RAVINDRAN
SRI. V.P. NARAYANAN

RESPONDENT(S)/APPELLANT/REVENUE:

THE COMMISSIONER OF INCOME TAX,
TRIVANDRUM-695001.

R. BY ADV. SRI. P.K.R. MENON, SR. COUNSEL, GOI (TAXES)
R. BY ADV. SRI. JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 28.05.2015,
THE COURT ON 02.06.2015 DELIVERED THE FOLLOWING:

APPENDIX IN ITA.51/13

APPELLANTS' EXHIBITS:

ANNEXURE A: TRUE COPY OF ASSESSMENT ORDER DATED 28.12.2006 PASSED BY THE ASSESSING OFFICER FOR THE A.Y 2004-05.

ANNEXURE B: TRUE COPY OF THE ORDER IN ITA.NO.190T/06-07 DATED 18.7.2007 PASSED BY THE CIT(A).

ANNEXURE C: TRUE COPY OF THE ORDER IMPOSING PENALTY PASSED BY THE ASSISTANT DIRECTOR OF INCOME TAX (EXEMPTION), TRIVANDRUM DATED 24.1.2008.

ANNEXURE D: TRUE COPY OF THE ORDER DATED 21.2.2008 IN ITA NO.142T/07-08 PASSED BY THE CIT(A) -1 TRIVANDRUM.

ANNEXURE E: TRUE COPY OF THE ORDER DATED 30.4.2010 IN ITA NO.778/COCH/08 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.

TRUE COPY

PS TO JUDGE

C.R.

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

I.T.A.No.51 of 2013

Dated this the 2nd day of June, 2015

JUDGMENT

Antony Dominic, J.

1.This appeal is filed against the order of the Income Tax Appellate Tribunal, Cochin Bench in ITA.778/Coch/2009.

2.The appellant is a trust registered under section 12AA of the Income Tax Act. A survey under section 133A was conducted in one of the establishments of the appellant, Al-Arif Hospital, Ambalathara, Trivandrum, on 12.12.2005 and some books of accounts were impounded. Subsequently, the assessee filed its return for the year 2004-05 on 31.3.2006, showing a deficit of ₹1,89,38,383/-. Later, on 24.11.2006, summons was issued requisitioning some other books of accounts and finally, on 28.12.2006, Annexure A assessment order under section 144 was passed, making additions of ₹12,51,427/- towards short collection at the hospital. Further, though the assessee had claimed deduction on account of capital expenditure at ₹1,84,39,383/-, the Assessing Officer allowed only ₹68,02,297/-.

3. In the appeal filed, the Commissioner of Income Tax (Appeals), after verification of the documents produced, sustained capital expenses, except to the extent of ₹34.65 lakhs. The addition towards short collection at the hospital was upheld. There was no further challenge against the assessment proceedings and accordingly, the order has become final.

4. The Assessing Officer, thereafter, initiated proceedings under section 271(1)(c) and issued notice for the levy of penalty. Finally, penalty of ₹16 lakhs as against the minimum leviable penalty of ₹15.56 lakhs was levied. In the appeal filed by the assessee, the Appellate Commissioner set aside the order of penalty. This order was challenged by the Revenue before the Income Tax Appellate Tribunal, which, by Annexure E order, allowed the appeal and restored the order of the Assessing Officer. It is this order which is under challenge before us.

5. We heard learned senior counsel for the appellant and the learned senior standing counsel for the Revenue and have considered the submissions made.

6. Section 271(1)(c) of the IT Act, in so far as it is relevant, provides that in the course of any proceedings under this Act, if the Assessing Officer is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall, in addition to tax, if any, payable by him, pay by way of penalty a sum which shall not be less than, but which shall not exceed three times the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income. Explanation 1 to this section, in so far as it is relevant for the purpose of this judgment, provides that where in respect of any facts material to the computation of the total income of any person under this Act, such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for

the purpose of section 271(1)(c), be deemed to represent the income in respect of which particulars have been concealed. Evidently therefore, section 271(1)(c) is attracted in a case where the Assessing Officer is satisfied that any person has concealed the particulars of his income or has furnished incorrect particulars of such income. Once the Assessing Officer has arrived at such a satisfaction, he is entitled to levy, in addition to the tax payable, by way of penalty, the amount indicated in 271 (1)(iii). In addition to this, as provided in the explanation, if the person concerned is not able to substantiate the explanation and fails to prove the bona fides of the explanation and all facts relating to the same and material to the computation of his total income, the amount added or disallowed shall be deemed to be his income.

7. It is in the background of this statutory provision that this Court has to examine whether the Tribunal was right in upholding the order of penalty that was passed by the Assessing Officer in exercise of his powers under section 271(1)(c) of the IT Act.

8. Admittedly, as per the Profit & Loss Account of the assessee, the collection of Al-Arif Hospital was ₹70,83,991/-. The account books impounded at the time of survey revealed total collection of ₹83,35,418/-. Evidently therefore, the assessee had not accounted the differential amount of ₹12,51,427/-. This finding has been upheld by the appellate authority also and has attained finality.

9. The assessee had also claimed deduction of ₹1,84,39,383/-. The Assessing Officer allowed only ₹68,02,297/-. The Commissioner (Appeals), after verification of some of the documents produced by the assessee, allowed the claim except to the extent of ₹34.65 lakhs. This finding also has become final. Therefore, in view of the aforesaid findings against the assessee, this is a case where clause (c) of section 271(1) providing concealment of the particulars of income or furnishing of inaccurate particulars of such income is attracted.

10. The only explanation offered by the assessee was that its books of accounts for the relevant year were impounded by the Revenue and therefore, the correct figures of income could not be furnished as per its return of income. They also contended that on account of the impounding of the books, their accounts could not be audited and that therefore, there was no intentional omission on their part. However, this explanation was rightly rejected by the Assessing Officer pointing out that it was the assessee's duty to get its accounts audited and the time for which had expired long before the survey. The Assessing Officer has further found that if at all there is any truth in the contention of the assessee, they could have applied for copies of extracts of the records impounded which was not done by the assessee.

11. In the aforesaid circumstances, this clearly is a case to which section 271(1)(c) is attracted and the levy of penalty cannot be interfered with.

12. Counsel for the appellant relied on the judgment of the Apex Court in Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26] to contend that penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. However, as rightly pointed out by the learned senior counsel appearing for the Revenue, the Apex Court itself had clarified in its judgment in Chairman, SEBI v. Shriram Mutual Fund [(2006) 5 SCC 361] that the said judgment being rendered in the context of a quasi criminal proceedings, the principles laid down therein cannot be relied on in a proceedings for imposition of civil liabilities. Our attention was also invited to the judgment of the Apex Court in Union of India v. Dharmendra Textiles Processors [(2008) 306 ITR 277] to contend that willful concealment is not essential for attracting civil liability of penalty under section 271(1)(c).

13. Counsel for the appellant sought to rely on the judgment of the Apex Court in Commissioner of Income

Tax v. Reliance Petro Products Pvt. Ltd [(2010) 322 ITR 158] to contend that the fact that a return is filed with incorrect particulars did not attract the provisions of section 271(1)(c). Though this principle is not open to doubt, we cannot ignore the fact that the above judgment was rendered in a case where the assessee had made an incorrect claim in the return on the basis of which proceedings under section 271(1)(c) was initiated. It was in that context, the Apex Court said that furnishing of inaccurate particulars of the income of the assessee in the return filed did not attract the provision. This judgment, in our view, cannot have any relevance to the facts of this case.

14. Counsel for the appellant also placed reliance on the judgment in Price Waterhouse Coopers Pvt. Ltd. v. Commissioner of Income Tax [(2012) 348 ITR 306]. That was a case where the assessee had committed a mistake and has rightly held section 271(1)(c) was wrongly invoked.

15.As we have already stated, this is a case where factually and legally all the ingredients of section 271(1)(c) are made out. Such being the case, we are unable to accept the case of the appellant that the Tribunal committed an illegality in restoring the order of the Assessing Officer.

Appeal fails. It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge