IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.773 of 2014

Ram Chandra Singh, son of Late Ramnandan Singh, resident of 301, Awadhkunj Apartment, Yarpur, Kachchi Talab, P.O. GPO, Patna, P.S. Gardanibag, District-Patna

... ... Appellant/s

Versus

1. Commissioner Of Income Tax, Patna having its office at Central Revenue Building, Beerchand Patel Marg, Patna.
2. Deputy Commissioner of Income Tax, Circle – 5, Patna, having its office at Loknayak Jaiprakash Bhavan, Dak Bungalow Road, Patna

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. D.V.Pathy, Advocate
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi, Sr. SC

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-01-2024

The appeal is filed from an order of the Income Tax Appellate Tribunal (hereinafter the 'Tribunal'), in which four questions of law were raised with respect to sundry creditors. The four substantial questions of law raised by order dated 20.05.2016 are extracted below :-

> "(i) Whether on the facts and in the circumstances of this case the Tribunal was in error in adopting a finding arrived at in assessment proceeding, particularly in view of the settled law that in penalty proceeding the taxing authority is bound to consider the matter afresh on the material before it with the burden of proof resting on the revenue?
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> (ii) Whether in view of the disclosure of Sundry trade Creditors in the return of income and in absence of any fresh material in penalty proceedings pointing to a conclusion to the

contrary the order of the Tribunal in the confirmation of penalty is erroneous in law?

(iii) Whether in view of acceptance of the entirety of the purchases in the assessment proceeding and also the brought forward outstanding balance of the same trade credit transaction in the subsequent assessment year the levy of penalty justified?

(iv) Whether the order of the Tribunal is contrary to the materials available on record and is, therefore, perverse?"

2. The penalty with respect to unexplained cash deposit was deleted especially finding that addition in that respect was deleted in the appeal before this Court. As far as the sundry creditors were concerned, the penalty was affirmed.

3. Learned counsel Sri D. V. Pathy contended that the books of accounts of the assessee were perfectly in order and the mere fact of the sundry creditors having not turned up cannot be held against the assessee. When there was no defect found in the transactions as revealed in the books of accounts, there could not have been a penalty imposed on the sole ground of sundry creditors not turning up to admit the credit. It is submitted that Section 271(1)(c) cannot be invoked unless there is a deliberate intention found on the party to conceal an income. In the present case in the course of transactions, the assessee had permitted credit to some of its purchasers which was shown as such in the books of accounts. The name and address of the creditors were supplied and they were summoned.

But, except one, the others did not appear. The assessee cannot be found fault with for such non-appearance and hence, there could not have been a penalty imposed, is the contention. Learned counsel would rely on ***Anantharam Veerasinghaiah & Co. v. Commissioner of Income Tax, Andhra Pradesh*** reported in ***1980 Supp SCC 13*** and ***Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai and Another*** reported in ***(2007) 6 SCC 329*** to further buttress his contentions.

4. Smt. Archana Sinha, Learned Senior Standing Counsel for the Income Tax Department points out that the assessee was given an opportunity to produce the sundry creditors, which he did not do. But for the entry in the books of accounts there was no materials produced, like invoices, to establish the transactions, which led to the credit as recorded in the books of accounts. Reliance was placed on a Division Bench judgment of the High Court of Kerala in ***Commissioner of Income Tax v. M/s AL-Ameen Educational Trust*** reported in ***2018 101 CCH 0518 Ker High Court*** and ***Joint Commissioner of Income Tax v. Saheli Leasing & Industries Ltd.*** reported in ***(2010) 324 ITR 0170.***

5. The order of assessment itself indicates that the assessee had shown sundry creditors at Rs. 15,43,496/-. On issuance of notice in the address furnished by the assessee itself, only one creditor turned up and confirmed the balance outstanding at Rs. 1,03,875/-. It was hence, the penalty was imposed. The Assessing Officer at the time of assessment had issued a questionnaire asking the assessee to produce the complete address, PAN and confirmation of creditors. The assessee only submitted the address of the creditors without the PAN or confirmation. Even the bills/invoices to establish the purchases from the creditors were not furnished. Certificate from some of the suppliers was furnished which, however, did not mention any outstanding liability. Though notice was issued to the addresses provided by the assessee except one, none appeared. ***Saheli Leasing and Industries Ltd.*** (supra) found that the purpose behind Section 271 (1)(c) is to penalize the assessee for concealing particulars of income and non-furnishing of such income, would be penalized even if there is loss returned in the subject assessment year. Hence, even if tax was not payable, the penalty was still leviable, if there is suppression found. Even in the circumstances of the income concealed having only reduced the returned loss, penalty was held to be leviable.

6. Having considered the decisions and the provision at Section 271(1)(c), we are of the opinion that the questions of law are to be answered against the assessee. ***Anantharam Veerasinghaiah*** (supra) was at a time when clause (c) of Section 271(1) penalized 'deliberate' furnishing of inaccurate particulars of income, which led to the Hon'ble Supreme Court holding that the revenue should find conscious concealment of particulars of income or deliberate furnishing of inaccurate particulars. The word 'deliberately' was omitted with retrospective effect from 01.04.1964. ***Dilip N. Schroff*** (supra) found that deletion of the word 'deliberately' may not have significance since the concealment and furnishing of inaccurate particulars of income signifies a deliberate act or omission on the part of the assessee. There the issue was of furnishing of an assessment of the value of the property which, cannot be termed a conscious act of furnishing of inaccurate particulars.

7. On facts, the sundry credits as claimed by the assessee has not been substantiated before the Assessing Officer. The assessee had not produced any evidence but for the addresses furnished of the creditors. As was noticed by the Assessing Officer, the invoices which led to the credits were also not produced by the assessee. Despite that, the Assessing Officer gave an opportunity to the assessee by way of issuing summons in the addresses furnished and also a further opportunity to produce the creditors before the Assessing Officer. It cannot be said that the penalty was levied only on the creditors having not turned up and confirmed the credits. There was absolutely no evidence produced to substantiate the credit that was recorded in the books of accounts; when there can be inferred a deliberate furnishing of inaccurate particulars of income. This is a clear case falling under Section 271(1)(c) since the assessee had merely doctored its books of accounts to show sundry credits without even the invoices leading to such credits being produced. The certificates furnished, of the so called creditors, also did not show the credits; thus bringing in *mens rea.*

8. On the first question of law, we have to notice ***Saheli Leasing and Industries Ltd.*** (*supra)* wherein the burden under Section 271(1)(c) is found entirely on the assessee and there cannot be any shifting of burden on to the revenue, especially in the context of no material having been placed before the Assessing Officer to substantiate the sundry credits claimed. The mere disclosure of the name and address of the sundry creditors cannot lead to substantiation of the credits especially when there was no evidence produced regarding the transactions which led to the credit. The mere acceptance of the entirety of the purchases would not lead to substantiation of the credits claimed; since the purchases which led to the credit, has not been established before the Assessing Officer. There was no material available on record before the Assessing Officer, the First Appellate Authority or the Tribunal, which would have persuaded them to take a contrary decision with respect to penalty.

9. We answer the questions of law framed against the assessee and in favor of the revenue. The appeal stands rejected.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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