A

D. M. MANASVI

v.

C. I. T., GUJARAT II, AHMEDABAD

September 19, 1972

B [K. S. HEGDE, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

Income Tax Act, 1961—Section 271(1)(c)—Scope of—Satisfaction regarding matters in cls. (a) to (c) precedes the issue of notice—Notice need not be issued in the course of assessment proceedings—No notice contemplated before arriving at the satisfaction—Provision for reference to Inspecting Assistant Commissioner does not mean proceedings cannot be initiated by Income Tax Officer.

C What is contemplated by clause (1) of section 271, Income Tax Act, 1961, is that the Income Tax Officer or the Appellate Assistant Commissioner should have been satisfied in the course of proceedings under the Act regarding matters mentioned in the clauses of that sub-section. It is not however essential that notice to the person proceeded against should have also been issued during the course of the assessment proceedings. Satisfaction, in the very nature of things, precedes the issue of notice and D it would not be correct to equate the satisfaction of the Income Tax Officer or Appellate Assistant Commissioner with the actual issue of notice. The issue of notice, indeed, is a consequence of the satisfaction of the Income Tax Officer or the Appellate Assistant Commissioner and it would be sufficient compliance with the provisions of the statute if the Income Tax Officer or the Appellate Assistant Commissioner is satisfied about the matters referred to in clauses (a) to (c) of sub-section (1) of section 271 during the course of proceedings under the Act, even though notice E to the person proceeded against in pursuance of that satisfaction is issued subsequent to the making of the assessment orders would not show that there was no satisfaction of the Income Tax Officer during the assessment proceedings, that the assessee had concealed the particulars of his income or had furnished incorrect particulars of such income. [393E]

Commissioner of Income Tax, Madras and Anr. v. *S. V. Angidi Chettiar*, [1962] 44 I.T.R. 739, referred to.

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The fact that the Income Tax Officer has to refer the case to the Inspecting Assistant Commissioner if the minimum imposable penalty exceeds the sum of rupees one thousand in a case falling under clause (c) of sub-section (1) of section 271 would not show that the proceedings in such a case cannot be initiated by the Income Tax Officer. [394F]

It is not necessary that the Income Tax Officer, before feeling satisfied G regarding the necessity of initiating proceedings for imposition of penalty and before issuing consequential notice should have issued another notice to the assessee and held a preliminary enquiry regarding the necessity of initiating proceedings. Such a course would result in mere duplication of the procedure without any advantage to the parties. The final conclusion on the point as to whether the requirements of clauses (a), (b) and (c) of s. 271 have been satisfied would be reached only after the assessee has been heard or has been given a reasonable opportunity of being heard. H [395E, B]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1447 to 1450 of 1969.

Appeals by special leave from the judgment and order dated August 30, 1968 of the Gujarat High Court at Ahmedabad in Income-tax Reference No. 6 of 1968.

M. C. Chagla and *I. N. Shroff*, for the appellant.

N. D. Karkhanis, *R. N. Sachthey* and *S. P. Nayar*, for the respondent.

The Judgment of the Court was delivered by

KHANNA, J.—This judgment would dispose of four civil appeals Nos. 1447 to 1450 of 1969 which have been filed by the assessee by special leave against the judgment of Gujarat High Court whereby that court answered the following two questions in a reference under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) in the affirmative and in favour of the department :

> "(1) Whether on the facts and in the circumstances of the case, the proceedings for the imposition of penalty were properly commenced in the course of any proceedings under the Act as required by section 271 of the Income Tax Act, 1961 for the assessment years 1959-60 to 1962-63 ?
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> (2) Whether on the facts and in the circumstances of the case, there was any material or evidence before the Tribunal to hold that the assessee had deliberately concealed particulars of his income or deliberately furnished inaccurate particulars of such income as required by sec. 271(1)(c) of the Act for the assessment years 1959-60 to 1962-63?"

While answering question No. 1 in the affirmative, the High Court observed that so far as the assessment year 1961-62 was concerned, the penalty proceedings were invalid.

The assessee is an individual and the matter relates to the assessment years 1959-60, 1960-61, 1961-62 and 1962-63. During the relevant years the assessee derived income from several sources. The assessment for the first year was made under section 23(3) of the Indian Income Tax Act, 1922. The Income Tax Officer subsequently found that income from the business in the name of M/s. Kohinoor Crain Mills Sales Depot (hereinafter referred to as the Kohinoor Mills) was not included in the return filed by the assessee and he had not shown any connection with or interest in the said business. For the subsequent three years the assessee disclosed 20 per cent as his share of the profits from Kohinoor Mills. The Income Tax Officer was of the

A opinion that Kohinoor Mills was not a genuine partnership but was the sole proprietorship concern of the assessee and the whole of the income from the said concern belonged to the assessee. As the assessment for the first two years had already been completed before the Income Tax Officer got the information regarding the interest in Kohinoor Mills, the Income Tax Officer
B reopened the assessment for those two years. The income from the Kohinoor Mills was thereafter included in the income of the assessee for the first two years as well as in the assessments relating to the remaining two years. The order of the Income Tax Officer in this respect was upheld by the Appellate Assistant Commissioner as well as by the Income Tax Appellate Tribunal.

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The non-disclosure of the business profits from Kohinoor Mills was considered by the Income Tax Officer to represent deliberate concealment, and so he initiated penalty proceedings under section 271 of the Act for the four assessment years in question. As, however, the minimum penalty leviable under sec-
D tion 271(1)(c) of the Act exceeded the sum of rupees one thousand, the cases were referred under section 274(2) of the Act to the Inspecting Assistant Commissioner.

The Inspecting Assistant Commissioner thereupon gave an
E opportunity to the assessee of being heard and, after hearing him, came to the conclusion that the assessee had concealed his income and deliberately furnished inaccurate particulars thereof for all the four assessment years in question. He accordingly levied penalties of Rs. 21,062, Rs. 1,14.477, Rs. 2,02,584 and Rs. 1,02,731 for the assessment years 1959-60, 1960-61, 1961-62 and 1962-63 respectively. In appeal before the Tribunal it was
F submitted on behalf of the assessee that there had been no valid levy of the penalties because the penalty proceedings had not been commenced in the course of proceedings under the Act. The Tribunal rejected this contention and observed that as the Income Tax Officer had given directions in the assessment order for the issue of a notice under section 277(1)(c) the penalty
G proceedings could be said to have commenced during the course of the assessment proceedings and therefore levy of penalty was not invalid. The Tribunal also rejected the submission made on behalf of the assessee that there was no evidence to show that the assessee was the owner of the business of Kohinoor Mills and that there had been concealment of his income on the part of the assessee. The Tribunal, however, gave relief to the assessee in
H the matter of quantum of penalty. On application made by the assessee, the questions reproduced earlier were referred to the High Court. The High Court, as already mentioned, answered

both the questions in the affirmative and in favour of the department. So far as the assessment year 1961-62 was concerned the penalty proceedings were held to be invalid on a ground with which we are not concerned.

Mr. Chagla on behalf of the assessee appellant has before us assailed the answers to the two questions given by the High Court. It is urged that there was no proper initiation of proceedings for the imposition of penalty. The requisite satisfaction of the Income Tax Officer, according to the learned counsel, has also not been shown to have existed for the initiation of the proceedings. There was also no material or evidence before the Tribunal, it is submitted, to hold that the assessee had deliberately concealed the particulars of his income or had deliberately furnished inaccurate particulars of his income. The above submissions have been controverted by Mr. Karkhanis on behalf of the department and, in our opinion, are without merit.

According to clause (c) of sub-section (1) of section 271 of the Act, if the Income Tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under the Act 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 pay in addition to the amount of tax, by way of penalty a sum calculated in accordance with clause (iii) of that sub-section. Section 274 of the Act prescribes the procedure for the imposition of penalty and reads as under :

> "274. *Procedure.*—No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.
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> (2) Notwithstanding anything contained in clause (iii) of sub-section (1) of section 271, if in a case falling under clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.
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> (3) An Appellate Assistant Commissioner on making an order under this Chapter imposing a penalty, shall forthwith send a copy of the same to the Income Tax Officer."

Clause (c) of sub-section (1) of section 271 shows that occasion for taking proceedings for payment of penalty arises if the Income Tax Officer or the Appellate Assistant Commissioner is

A satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. It has also to be shown that the Income Tax Officer or the Appellate Assistant Commissioner was so satisfied in the course of proceedings under the Act. In the present case, we find that the Income Tax Officer while making the assessment orders for B the assessment years in question held that Kohinoor Mills had been wrongly shown to be a partnership firm and that the other alleged partners were simply name lenders for the assessee. It was further held that Kohinoor Mills was the Proprietary concern of the assessee and the income from that concern should be considered to be the income of the assessee. Notice was ordered to be issued for proposed penalty under section C 271(1)(c) of the Act to the assessee "in regard to the concealment of and furnishing inaccurate particulars of income" from Kohinoor Mills. Notices, it would appear, were thereafter issued by the Income Tax Officer to the assessee.

The fact that notices were issued subsequent to the making of the assessment orders would not, in our opinion, show that D there was no satisfaction of the Income Tax Officer during the assessment proceedings that the assessee had concealed the particulars of his income or had furnished incorrect particulars of such income. What is contemplated by clause (1) of section 271 is that the Income Tax Officer or the Appellate Assistant Commissioner should have been satisfied in the course E of proceedings under the Act regarding matters mentioned in the clauses of that sub-section. It is not, however, essential that notice to the person proceeded against should have also been issued during the course of the assessment proceedings. Satisfaction in the very nature of things precedes the issue of notice and it would not be correct to equate the satisfaction of the F Income Tax Officer or Appellate Assistant Commissioner with the actual issue of notice. The issue of notice indeed is a consequence of the satisfaction of the Income Tax Officer or the Appellate Assistant Commissioner and it would, in our opinion, be sufficient compliance with the provisions of the statute if the Income Tax Officer or the Appellate Assistant Commissioner is satisfied about the matters referred to in clauses (a) to (c) of G sub-section (1) of section 271 during the course of proceedings under the Act even though notice to the person proceeded against in pursuance of that satisfaction is issued subsequently. We may in this context refer to a decision of five judges bench of this Court in the case of *Commissioner of Income Tax, Madras and Another* v. *S. V. Angidi Chettiar*(1). Shah J. H speaking for the Court while dealing with section 28 of the Indian Income Tax Act, 1922 observed :

(1) [1962] 44 I.T.R. 739.

"The power to impose penalty under section 28 depends upon the satisfaction of the Income Tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in clauses (a), (b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income Tax Officer before the completion of the assessment proceedings by the Income Tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction."

The appellant in the present case, it may be mentioned, has not produced or got printed in the paper book the notice which was issued to him by the Income Tax Officer in connection with the imposition of penalty. In the absence of that notice, it cannot be said, as has now been suggested on behalf of the assessee appellant, that there was no mention in the notice of the satisfaction of the Income Tax Officer on the point that the assessee had concealed the particulars of his income or had furnished inaccurate particulars thereof.

We are also not impressed by the argument advanced on behalf of the appellant that the proceedings for the imposition of penalty were initiated not by the Income Tax Officer but by the Inspecting Assistant Commissioner when the matter had been referred to him under section 274(2) of the Act. The proceedings for the imposition of penalty in terms of sub-section (1) of section 271 have necessarily to be initiated either by the Income Tax Officer or by the Appellate Assistant Commissioner. The fact that the Income Tax Officer has to refer the case to the Inspecting Assistant Commissioner if the minimum imposable penalty exceeds the sum of rupees one thousand in a case falling under clause (c) of sub-section (1) of section 271 would not show that the proceedings in such a case cannot be initiated by the Income Tax Officer. The Income Tax Officer in such an event can refer the case to the Inspecting Assistant Commissioner after initiating the proceedings. It would, indeed, be the satisfaction of the Income Tax Officer in the course of the assessment proceedings regarding the concealment of income which would constitute the basis and foundation of the proceedings for levy of penalty.

There is also no force in the submission made on behalf of the appellant that the Income Tax Officer before feeling satisfied regarding the necessity of initiating proceedings for imposition

A of penalty and before issuing consequential notice should have issued another notice to the assessee and held a preliminary enquiry regarding the necessity of initiating proceedings. Such a course, in our opinion, would result in mere duplication of the procedure without any advantage to the parties. A similar contention was advanced in a case relating to initiation of pro-
B ceedings under section 34 of the Indian Income Tax Act, 1922 and was repelled by the Judicial Committee in the case of *Commissioner of Income Tax, Bengal* v. *M/s. Mahaliram Ramjidas*(1) in the following words :

> "Therefore a construction of section 34 which
> C requires a quasi-judicial enquiry to be held before the powers under the section can be operated would result in mere duplication of procedure and in two enquiries of the same kind, into the same matter, conducted by the same official, and without any advantage to the parties. A construction so unreasonable and unpracti-
> D cal ought not to be preferred when another construction is open. Accordingly, their Lordships are of opinion that the Income Tax Officer is not required by the section to convene the assessee, or to intimate to him the nature of the alleged escapement, or to give him an opportunity of being heard, before he decides
> E to operate the powers conferred by the section."

It may also be observed that what is contemplated by sections 271 and 274 of the Act is that there should be *prima facie* satisfaction of the Income Tax Officer or the Appellate Assistant Commissioner in respect of the matters mentioned in sub-section (1) before he hears the assessee or gives him an opportunity of being heard. The final conclusion on the point as to
F whether the requirements of clauses (a), (b) and (c) of section 271(1) have been satisfied would be reached only after the assessee has been heard or has been given a reasonable opportunity of being heard.

The argument that there was no material or evidence before the Tribunal to hold that the assessee had deliberately concealed
G the particulars of his income or had deliberately furnished inaccurate particulars of such income is equally bereft of force. The Tribunal while dealing with this aspect of the matter referred to its earlier observations in the appeal relating to the refusal of the Income Tax authorities to register Kohinoor Mills as a firm. Those observations were as under :

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> "In our view, the Income-Tax authorities were fully justified in refusing to grant registration to the firm for

(1) [1940] 8 IJR 442.

all the three years. On going through the statements of Ramanbhai Thakorlal and Gopaldas, we have no doubt at all that Ramanbhai; Thakorlal and Kirit were not partners in this business. Thakorlal was mere student for a considerable part of the period, during which he masqueraded as a partner. The qualifications of both Thakorlal and Ramanbhai to be partners of this business were only wholly inadequate to the point of being non-existence. They had no knowledge of the happening of the business and they had no control whatsoever on the profits which were accumulated in their names. The profits were finally disposed of after Shri D. M. Manasvi became the sole proprietor of the business and even before he became the sole proprietor he had extracted the profits from the business under guise of loans to be utilised for his own purpose. There is no doubt left in our minds that the business was under the control of Shri D. M. Manasvi once the three dummies are out of the way, Shri D. M. Manasvi is the only adult person left in charge of the business and the three minors are only his grand children. We are, therefore, of the view that not only there was no firm in existence as alleged by the partnership deed but that the business belonged to Shri D. M. Manasvi. The inclusion of the profits of the business in the assessment of Shri D. M. Manasvi is not far fetched or fantastic, as the learned counsel suggested in the course of his arguments. According to the partnership deed, there were four adult partners. If three out of these four were dummies the only real and effective partner was Shri D. M. Manasvi. The three minors who were admitted to the benefits of the partnership were his grand children. The accumulated profits while the business was run in the guise of a firm were taken over by Shri D. M. Manasvi for use according to his own sweet will. The final disposition of the profits was made only after he shed the disguise and became the sole proprietor of the business and the manner in which the funds were ultimately channelised into the investment in the company in which his family was interested in the name of his son Ravindra only adds the finishing touch to the scheme. We would, therefore, confirm the orders of the Income Tax authorities refusing registration to the firm for all the three assessment years in question."

It would thus follow that the Tribunal came to the conclusion on the basis of relevant evidence that the business of Kohinoor

A Mills was under the control of the assessee and that there was no firm in existence as alleged. The Tribunal also found that the income of the said concern belonged to the assessee himself even though the business was run in the guise of a firm. It was held that the whole scheme was to disguise the profits of the assessee as those of the firm. It cannot therefore be said that there was B no relevant material or evidence before the Tribunal to hold that the assessee had deliberately concealed the particulars of his income or had deliberately furnished inaccurate particulars of such income.

Mr. Chagla has referred to the case of *Commissioner of Income Tax, West Bengal I* v. *Anwar Ali*(1) wherein the relevant C head-note which is based upon the observations in the body of the judgment, reads as under :

> "Proceedings under section 28 of the Income Tax Act, 1922 are penal in character. The gist of the offence under section 28(1)(c) is that the assessee has concealed the particulars of his income or deliberate- D ly furnished inaccurate particulars of such income and the burden is on the department to establish that the receipt of the amount in dispute constitutes income of the assessee. If there is no evidence on the record except the explanation given by the assessee, which explanation has been found to be false, it does not E follow that the receipt constitutes his taxable income. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false does not necessarily give rise to the inference that the disputed amount represents income. It cannot be said that the finding given in the assessment proceedings for deter- F mining or computing the tax is conclusive. However, it is good evidence. Before penalty can be imposed the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately fur- G nished inaccurate particulars."

On the basis of the dictum laid down in the above case, it is urged by Mr. Chagla that from the mere fact that the explanation of the assessee in the present case was found to be false it did not follow that the disputed amount represented his income and that the assessee had consciously concealed the particulars H of his income or had deliberately furnished inaccurate particulars. In this respect we find that in the present case the inference that

(1) [1970] 76 I.T.R. 696.

the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars is based not merely upon the falsity of the explanation given by the assessee. On the contrary, it is made amply clear by the order of the Tribunal that there was positive material to indicate that the business of Kohinoor Mills belonged to the assessee and the whole scheme was to disguise the profits of the assessee as those of a firm of four partners. The present is not a case of inference from mere falsity of explanation given by the assessee but a case wherein there are definite findings that a device had been deliberately created by the assessee for the purpose of concealing his income. The assessee as such can derive no assistance from *Anwar Ali's* case.

Reference has also been made to the observations in the case of *Commissioner of Income Tax, Madras* v. *Khoday Eswarsa and Sons* (1) that penalty cannot be levied solely on the basis of the reasons given in the original order of assessment. It is, however, not necessary to go into this aspect of the matter because the penalty in the present case has not been levied solely on the basis of the reasons given in the original order of assessment. The Tribunal in this respect has mainly taken into account the facts brought to light by the order made in appeal arising out of the refusal of the Income Tax authorities to register Kohinoor Mills.

As a result of the above, we dismiss the appeals with costs. One hearing fee.

K.B.N. *Appeals dismissed.*

(1) [1972] 83 I.T.R. 369.