

**IN THE SUPREME COURT OF INDIA**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 636 OF 2005

**Assistant Commissioner of Income Tax, Udaipur ....Appellant(s)**

Versus

**M/s. Gebilal Kanhaialal HUF, Through Karta, Udaipur ....Respondent(s)**

O R D E R

Heard learned counsel on both sides.

This civil appeal filed by the Department concerns assessment year 1987-88.

Assessee is an HUF, represented by the Karta, Shri Kalyanmal Karva. During the period 29th July 1987 to 1st August 1987, search and seizure operations were carried out at the residential/business premises of the assessee. Assets worth Rs.42,32,000/- besides incriminating documents were seized. On the last date of the search, i.e., August 1, 1987, the said Karta while surrendering the amount, made a statement under Section 132(4) of the Income Tax Act, 1961 (for short, 'the Act'). On December 2, 1988 and December 18, 1988 notices were sent under Section 142(1)(ii) to the Karta calling upon him to furnish in writing and verified in the prescribed manner information (including a statement of all assets and liabilities whether included in the accounts or not). Such statement containing the relevant information was made by the Karta on February 16, 1990. In the said statement the said Karta reiterated his earlier statement regarding concealment of income. One date needs to be mentioned. As stated, in this civil appeal, we are concerned with the assessment year 1987-88. For the accounting year ending 31.3.87, assessee was required to file his return of income under Section 139(1) on or before 31st July, 1987. Such return of income was not filed. It is important to note that although on August 1, 1987 the said Karta made a statement under Section 132(4) surrendering an amount of Rs. 42,32,000/-, the assessee chose not to file its return of income on due date, i.e., 31st July, 1987. Failure to file such return of income on 31st July, 1987 and failure to pay tax thereon is the main reason relied upon by the Department to deny to the assessee the benefit of immunity under clause (2) of Explanation 5 to Section 271(1)(c). The Karta also later on retracted his statement dated August 1, 1987. However, according to the Department, the assessee had complied with all the conditions of clause (2) of Explanation 5 except payment of tax in time [See page "G" of the paper book].

A limited question which arises for determination is, whether the assessee was entitled to immunity in terms of clause (2) of Explanation 5 to Section 271(1)(c) of the Act?

To answer the above question, it would be worthwhile to reproduce Explanation 5 read with clause (2) of Section 271(1)(c), which is quoted hereinbelow:

"Explanation 5: Where in the course of a search under section 132, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilizing (wholly or in part) his income,-

(a) For any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein; or

(b) for any previous year which is to end on or after the date of the search, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income, unless, -

(2) he, in the course of the search, makes a statement under sub-section (4) of section 132 that any money, bullion, jewellery or other valuable article or thing found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time specified in clause (a) or clause (b) of sub-section (1) of section 139, and also specifies in the statement the manner in which such income has been derived and pays the tax, together with interest, if any, in respect of such income."

Explanation 5 is a deeming provision. It provides that where, in the course of search under Section 132, the assessee is found to be the owner of unaccounted assets and the assessee claims that such assets have been acquired by him by utilizing, wholly or partly, his income for any previous year which has ended before the date of search or which is to end on or after the date of search, then, in such a situation, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall be deemed to have concealed the particulars of his income for the purposes of imposition of penalty under Section 271(1)(c). The only exceptions to such a deeming provision or to such a presumption of concealment are given in sub-clauses (1) and (2) of Explanation 5. In this case, we are concerned with interpretation of clause (2) of Explanation 5, which has been quoted above. Three conditions have got to be satisfied by the assessee for claiming immunity from payment of penalty under clause (2) of Explanation 5 to Section 271(1)(c). The first condition was that the assessee must make a statement under Section 132(4) in the course of search stating that the unaccounted assets and incriminating documents found from his possession during the search have been acquired out of his income, which has not been disclosed in the return of income to be

furnished before expiry of time specified in Section 139(1). Such statement was made by the Karta during the search which concluded on August 1, 1987. It is not in dispute that condition No.1 was fulfilled. The second condition for availing of the immunity from penalty under Section 271(1)(c) was that the assessee should specify, in his statement under Section 132(4), the manner in which such income stood derived. Admittedly, the second condition, in the present case also stood satisfied. According to the Department, the assessee was not entitled to immunity under clause (2) as he did not satisfy the third condition for availing the benefit of waiver of penalty under Section 271(1)(c) as the assessee failed to file his return of income on 31st July, 1987 and pay tax thereon particularly when the assessee conceded on August 1, 1987 that there was concealment of income. The third condition under clause (2) was that the assessee had to pay the tax together with interest, if any, in respect of such undisclosed income. However, no time limit for payment of such tax stood prescribed under clause (2). The only requirement stipulated in the third condition was for the assessee to "pay tax together with interest". In the present case, the third condition also stood fulfilled. The assessee has paid tax with interest upto the date of payment. The only condition which was required to be fulfilled for getting the immunity, after the search proceedings got over, was that the assessee had to pay the tax together with interest in respect of such undisclosed income upto the date of payment. Clause (2) did not prescribe the time limit within which the assessee should pay tax on income disclosed in the statement under Section 132(4).

For the above reasons, we hold that the assessee was entitled to immunity under clause (2) of Explanation 5 to Section 271(1)(c) and, accordingly, the civil appeal filed by the Department is hereby dismissed with no order as to costs.

.....CJI

[S.H. KAPADIA]

.....J.

[MADAN B. LOKUR]

New Delhi,

September 04, 2012.