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THE COMMISSIONER OF INCOME TAX, KERALA

v.

SMT. P.K. KOCHAMMU AMMA PEROKE

September 23, 1980

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[P. N. BHAGWATI AND E. S. VENKATARAMIAH, JJ.]

*Penalty, imposition of—Assessee failed to include the income of the spouse and minor child in the return of income for the assessment year 1964-65, though includible under s. 64(1) and (iii)—Whether failure entails penalty under s. 271(1)(c) of the Income Tax Act, 1961, as the unamended Rule 12 of the 1961 (prior to 31-3-1972) did not provide any column in the prescribed form—Income Tax Act, 1961, ss. 2(45), 4, 5, 64(1)(i) and (iii), 139 and 271(1)(c) read with Rule 12 of the Income Tax Rules, 1962, scope of—Words and phrases “his income” meaning of.*

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The respondent assessee was a partner in the partnership firms of M/s. Malabar Tile Works and M/s. Malabar Plywood Works and alongwith her there were other partners including her husband and minor daughter. In her returns for the assessment year 1964-65 for which the relevant accounting year was the calendar year ending 31st December, 1963, the assessee filed a return of income omitting the amounts representing the shares of her husband and minor daughter in the partnership firms from her income. The Income Tax Officer, however, brought the amounts, namely, Rs. 59,506 to tax and referred the case for taking action under s. 271(1)(c) of the Act to the Assistant Appellate Commissioner who imposed a penalty of namely, Rs. 7,000 on the assessee for having concealed her income. In appeal the Tribunal set aside the order and the High Court on reference affirmed the Tribunal's order. Hence the appeal by Revenue to this Court after obtaining special leave.

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Dismissing the appeal, the Court

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HELD : (1) The assessee, in view of the fact that the prescribed form for filing of returns under s. 139 of the Act, prior to 31st March, 1972, did not contain separate column to show “income arising to spouse/minor child or any other person referred to in Chapter V of the Act”, and in view of the decision of three Judges Bench reported in 74 I.T.R. 83 SC could not be said to have concealed her income by not disclosing in the return filed by her the amounts representing the shares of her husband and minor daughter in the two partnership firms. [788B]

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(2) The term “his income” for the purpose of s. 271(1)(c) of the Act, is “his income” which the assessee is liable to disclose for the purposes of assessment and yet fails to do so. The return of income under s. 139(1) of the Act is required to be filed in order to enable the Revenue Authorities to make a proper assessment of tax on the assessee. *A fortiori*, it follows that the assessee must disclose in the return every item of income which is liable to be taxed in his hands under ss. 4 & 5 of the Act. [785B; F-H]

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**A** (3) The definition of "total income" in s. 2(45), no doubt refers to s. 5 which lays down that all the income profits and gains accrued or arisen to the assessee or received by or on behalf of the assessee shall be liable to be included in his total income but this provision is subject to the other provisions of the Act and therefore if the income of any other person is declared by any provision of the Act to be includible in computing the total income

**B** of the assessee, such income would form part of the total income exigible to tax under s. 4 of the Act. S. 64(1) is one such provision which provides for inclusion of the income of certain other persons in computing the total income of the assessee. [785F-H]

**C** Section 64(1) makes it clear that though the share of the spouse or minor child in the profits of a partnership firm in which the assessee is a partner is not the income of the assessee but is the income of such spouse or minor child it is liable to be included in computing the total income of the assessee and it would be assessable to tax in the hands of the assessee. The total income of the assessee chargeable to tax would include the amounts representing the shares of the spouse and minor child in the profits of the partnership firm.

**D** Obviously the words "his income" in s. 139 sub-s. (1) must include every item of income which goes to make up his total income assessable under the Act. The amounts representing the shares of the spouse and minor child in the profits of the partnership firm would be part of "his income" for the purpose of assessment to tax and would have to be shown in the return of income

**E** filed by him. [786B-D]

(4) It is true that the form of the return prescribed by Rule 12 of the Income Tax Rules, 1962 which was in force during the relevant assessment year did not contain any separate column for showing the income of the spouse and minor child liable to be included in the total income of the assessee, but it did contain a Note stating that if the income of any other person is includible in the total income of the assessee under the provisions, *inter alia*, of s. 64, such income should also be shown in the return under the appropriate head. This Note clearly required the assessee to show in the return under the appropriate head of income, namely, "profits and gains of business or profession" the amounts representing the shares of the husband and minor daughter of the assessee in the profits of the two partnership firms. The assessee however failed to disclose these amounts in the return submitted by her and there was plainly and manifestly a breach of the obligation imposed by s. 139 sub-s. (1) requiring the assessee to furnish a return of her income in the prescribed form. To accept the contention that despite the Note the assessee was still not liable to show in the return the amounts representing the shares of her husband and minor daughter in the two partnership firms would render the Note meaningless and futile and turn it into a dead-letter

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and that would be contrary to all recognised canons of construction. The assessee was guilty of concealment of this item of income which plainly attracted the applicability of s. 271 sub-s. (1) clause (c). [786G-787D]

*V.D.M.R.M.M.R.M. Muthiah Chettiar v. Commissioner of Income Tax*, 74 ITR 183 (SC), doubted

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1086 of 1973.

Appeal by Special Leave from the Judgment and Order dated 8-12-1971 of the Kerala High Court in T.I.T. Reference No. 91/69.

*S. C. Manchanda* and *Miss A. Subhashini* for the Appellants.

*K. T. Harindranath* and *T. T. Kunhikannan* for the Respondent.

The Judgment of the Court was delivered by

BHAGWATI J.—This appeal arises out of proceedings initiated by the Revenue authorities for levying penalty on the assessee. The assessee is a lady and during the assessment year 1964-65 for which the relevant accounting year was the calendar year ended 31st December, 1963, the assessee was a partner in two partnership firms, M/s. Malabar Tile Works and M/s. Malabar Plywood Works and alongwith her there were other partners including her husband and minor daughter. The assessee filed a return of income for the assessment year 1964-65 showing Rs. 4754 as income from property and Rs. 4748 as income from other sources. The assessee stated in the return under the column "Profits and Gains of Business and Profession" against item (b) which required share in the profits of a registered firm to be shown "Please ascertain from the firms' files the Malabar Tile Works and Malabar Plywood Works." The assessee, however, did not show in the return the amounts representing the shares of her husband and minor daughter in the firms of M/s. Malabar Tile Works and M/s. Malabar Plywood Works though they were clearly includible in computing the total income of the assessee under section 64 sub-section (1) clauses (i) and (iii) of the Income Tax Act, 1961. The Income Tax Officer while making the assessment included the amounts representing the shares of the assessee's husband and minor daughter in the profits of these two firms in the assessment of the assessee and taxed the assessee on a total income of Rs. 59,506 after including these amounts. Since the assessee had not shown these amounts as forming part of her total income in the return submitted by her, though they were clearly includible in her total income under section 64, sub-section (1) clauses (i) and (iii), the Income Tax Officer was of the view that the assessee had con-

A cealed the particulars of her income and rendered herself liable to penalty under section 271 sub-section (1) clause (c), and since the minimum penalty leviable on the assessee was Rs. 1000, he referred the case to the Assistant Appellate Commissioner who issued notice under section 274 and after hearing the assessee, imposed a penalty of Rs. 1000. The assessee appealed to the Tribunal against the order imposing penalty and one of the arguments urged on behalf of the assessee in support of the appeal was that there was no obligation of the assessee to show in her return the amounts representing the shares of her husband and minor daughter in the two firms and there was accordingly no concealment by her of the particulars of her income so as to attract the penalty under section 271 sub-section (1) clause (c). The Tribunal accepted this argument of the assessee and held that section 271 sub-section (1) clause (c) could be invoked only if there was concealment of the "particulars of his income by the assessee" and the words "his income" referred only to be the income of the assessee himself and not to the income of any other person which might be liable to be included in the income of the assessee by reason of section 64 sub-section (1) clauses (i) and (iii). The Tribunal accordingly held that the omission or failure of the assessee to disclose in her return the amounts representing the shares of her husband and minor daughter in the two firms as forming part of her income could not be visited with penalty under section 271 sub-section (1) clause (c) and in this view, the Tribunal allowed the appeal and set aside the order imposing penalty. This led to the filing of an application for a reference by the Revenue and on the application, the Tribunal referred the following question of law for the opinion of the High Court :

F "Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in cancelling the penalty levied under section 271(1)(c)?"

The High Court took the view that the words used in section 271 sub-section (1) clause (c) were "his income" and the amounts representing the shares of the assessee's husband and minor daughter in the two firms could not be said to be the income of the assessee, though in computing her total income these amounts were liable to be included by reason of section 64 sub-section (1) clauses (i) and (iii) and therefore, the assessee could not be said to have concealed her income when she did not disclose these amounts as forming part of her income in the return submitted by her. The High Court accordingly answered the question referred to it in favour of the assessee and against the Revenue. The Revenue thereupon preferred the present appeal with special leave obtained from this Court.

There is a decision of this court which is directly in point and it concludes the determination of the question arising in this appeal against the Revenue but before we refer to that decision, we might first examine the question on principle as a matter of pure interpretative exercise. Section 271 sub-section (1) clause (c) provides for imposition of penalty on an assessee if it is found inter alia that the assessee has concealed the particulars of "his income." The question is what is the scope and content of the words "his income" occurring in this penal provision. Do they refer only to the income of the assessee himself or do they also take in the income of others which is liable to be included in the computation of the total income of the assessee by reason of the relevant provisions of the Act, such as section 64 sub-section (1) clauses (i) and (iii)? The answer to this question obviously depends upon as to what is "his income" which the assessee is liable to disclose for the purpose of assessment for concealment can only be of that which one is bound to disclose and yet fails to do so. Section 139 provides for filing of a return of income by an assessee and sub-section (1) of this section lays down that every person whose total income during the previous year exceeds the maximum amount which is not chargeable to income tax, shall furnish a return of his income in the prescribed form and verified in the prescribed manner, and setting forth such other particulars as may be prescribed. The return of income is required to be filed in order to enable the Revenue Authorities to make a proper assessment of tax on the assessee. It must therefore follow *a fortiori* that the assessee must disclose in the return every item of income which is liable to be taxed in his hands as part of his total income. The charge of income tax is levied by section 4 on the total income of the assessee, and 'total income' is defined in section 2 sub-section (45) to mean "the total amount of income referred to in section 5 computed in the manner laid down" in the Act. It is no doubt true that the definition of 'total income' in Section 2 sub-section (45) refers to section 5 and this latter provision lays down that all the income profits and gains accrued or arisen to the assessee or received by or on behalf of the assessee shall be liable to be included in his total income but this provision is subject to the other provisions of the Act and therefore if the income of any other person is declared by any provision of the Act to be includible in computing the total income of the assessee, such income would form part of the total income exigible to tax under section 4 of the Act. Now, section 64 sub-section (1) is one such provision which provides for inclusion of the income of certain other persons in computing the total income of an assessee. Clauses (i) and (iii) of this sub-section provide that in computing the total income of an assessee there shall be included all

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A such income as arises directly or indirectly to the spouse of such assessee from the partnership of the spouse in a firm carrying on a business in which such individual is a partner as also to a minor child of such assessee from the admission of the minor to the benefits of the partnership firm. It is clear from this provision that though the share of the spouse or minor child in the profits of a partnership-

B firm in which the assessee is a partner is not the income of the assessee but is the income of such spouse or minor child it is liable to be included in computing the total income of the assessee and it would be assessable to tax in the hands of the assessee. The total income of the assessee chargeable to tax would include the amounts representing the shares of the spouse and minor child in the profits of the

C partnership firm. If this be the correct legal position, there can be no doubt that the assessee must disclose in the return submitted by him, all amounts representing the shares of the spouse and minor child in the profits of the partnership firm in which he is a partner, since they form part of his total income chargeable to tax. The words "his income" in section 139 sub-section (1) must include every item of

D income which goes to make up his total income assessable under the Act. The amounts representing the shares of the spouse and minor child in the profits of the partnership firm would be part of "his income" for the purpose of assessment to tax and would have to be shown in the return of income filed by him.

E The assessee then contended that the return of income which was required to be filed by her under section 139 sub-section (1) was a return in the prescribed form and the form of the return prescribed by rule 12 of the Income Tax Rules, 1962 did not contain any column for showing the income of the spouse and minor child which was

F liable to be included in the total income of the assessee under section 64 sub-section (1) clauses (i) and (iii) and there was therefore no obligation on the assessee to disclose this income in the return filed by her. This contention is also, in our opinion, fallacious and deserves to be rejected. It is true that the form of the return prescribed by rule 12 which was in force during the relevant assessment year did

G not contain any separate column for showing the income of the spouse and minor child liable to be included in the total income of the assessee, but it did contain a Note stating that if the income of any other person is includible in the total income of the assessee under the provisions *inter alia* of section 64, such income should also be shown in the return under the appropriate head. This Note clearly

H required the assessee to show in the return under the appropriate head of income, namely, "Profits and Gains of Business or Profession" the amounts representing the shares of the husband and minor

daughter of the assessee in the profits of the two partnership firms. But even so, the assessee failed to disclose these amounts in the return submitted by her and there was therefore plainly and manifestly a breach of the obligation imposed by section 139 sub-section (1) requiring the assessee to furnish a return of her income in the prescribed form. It is difficult to see how the Note in the prescribed form of the return could be ignored by the assessee and she could contend that despite the Note, she was not liable to show in her return the amounts representing the shares of her husband and minor daughter in the two partnership firms. The contention of the assessee, if accepted, would render the Note meaningless and futile and turn it into dead letter and that would be contrary to all recognised canons of construction. There can be no doubt that the assessee was bound to show in her return the amounts representing the shares of her husband and minor daughter in the two partnership firms and in failing to do so, she was guilty of concealment of this item of income which plainly attracted the applicability of section 271 sub-section (1) clause (c).

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It is obvious that on this view the order imposing penalty on the assessee would have to be sustained but there is a decision of this Court in *V.D.M.R.M.R.M.Muthiah Chettiar vs. Commissioner of Income Tax Madras*<sup>(1)</sup> which is binding upon us and where we find that a different view has been taken by a Bench of three Judges of this Court. It was held in this case that even if there were any printed instructions in the form of the return requiring the assessee to disclose the income received by his wife and minor child from a firm of which the assessee was a partner, there was, in the absence in the return of any head under which the income of the wife or minor child could be shown, no obligation on the assessee to disclose this item of income, the assessee could not be deemed to have failed or omitted to disclose fully and truly all material facts necessary for his assessment within the meaning of section 34(1)(a) of the Indian Income Tax Act, 1922. With the greatest respect to the learned Judges who decided this case, we do not think, for reasons already discussed, that this decision lays down the correct law on the subject, and had it not been for the fact that since 1st April 1972 the form of the return prescribed by rule 12 has been amended and since then, there is a separate column providing the "income arising to spouse/minor child or any other person as referred to in Chapter V of the Act" should be shown separately under that column and consequently there is no longer any scope for arguing that the assessee is not bound

(1) 74 ITR 183.

- A** to disclose such income in the return to be furnished by him, we would have referred the present case to a larger bench. But we do not propose to do so since the question has now become academic in view of the amendment in the form of the return carried out with effect from 1st April 1972. We would therefore follow this decision in *Muthiah Chettiar's* case, which being a decision of a bench of
- B** three Judges of this Court is binding upon us, and following that decision, we hold that the assessee could not be said to have concealed her income by not disclosing in the return filed by her the amounts representing the shares of her husband and minor daughter in the two partnership firms.
- C** We accordingly dismiss the appeal, but in the peculiar circumstances of the present case, we think that the fair order of costs would be that each party should bear and pay its own costs throughout.

*Appeal dismissed.*

S.R.