

emphasises the Legislature's intention of ensuring the payment of either the controlled price or the price prevailing or likely to prevail during the post-harvest period in cases where an order under clause (f) of sub-section (2) of section 3 is made.

18. As observed earlier, in the returns no effort was made to connect the price fixed with either the controlled price or the price prevailing or likely to prevail during post-harvest period. Even during arguments the learned Advocate-General did not produce any record, from the perusal of which an inference could be drawn that the figure of Rs. 105 per quintal had been arrived at on the basis of the price prevailing or likely to prevail during the post-harvest period in the Punjab. In this situation, the only conclusion possible is that clause 4 of the Levy Order was *ultra vires* of sub-section (3-B) of section 3 of the Act. The petitions are consequently accepted and clause 4 of the Punjab Wheat Procurement (Levy) Order, 1974, is struck down as being unconstitutional and violative of sub-section (3-B) of section 3 of the Essential Commodities Act. Considering the complicated nature of the question involved, the parties are left to bear their own costs.

R. N. MITTAL, J.—I agree.

N. K. S.

INCOME-TAX REFERENCE

Before Man Mohan Singh Gujral and Rajendra Nath Mittal, JJ.

THE COMMISSIONER OF INCOME-TAX HARYANA, H. P. & DELHI, III NEW DELHI,—*Applicant.*

versus

M/S BEHARI LAL PYARE LAL AMBALA CITY,—*Respondent.*

Income Tax Reference No. 39 of 1973

July 3, 1975.

Income Tax Act (XLIII of 1961)—Sections 2(24)(v), 4, 5, 41(1) and 271(1) (c)—Non-disclosure of 'deemed income' under section 41(1)—Whether attracts penalty.

The Commissioner of Income-tax Haryana, H.P. & Delhi, III New Delhi v. M/s. Behari Lal Pyare Lal Ambala City (R. N. Mittal, J.)

Held, that the word 'income' as defined in the Income Tax Act 1961 includes income under section 41. A reading of sections 4 and 5 further shows that the 'deemed income' under section 41 shall be liable to tax under section 4 of the Act as such an income will be as good an income as income from any other source mentioned in the definition clause. According to section 271 of the Act, concealment of income or furnishing of inaccurate particulars regarding any income would entitle the income-tax officer and the Appellate Assistant Commissioner to impose penalty. Therefore, if income under section 41 is concealed, the provisions of section 271 are attracted provided other conditions in that section are fulfilled. If an income has accrued whether it actually accrued or whether it accrued as a result of the deeming provisions of the Act, will not make any difference. An income which has accrued as a result of the deeming provisions of the Act can form the basis for levy of penalty. Thus non-disclosure of deemed income attracts penalty under section 271 of the Act. (Para 4).

Reference under Section 256(1) of the Income Tax Act 1961, by the Income-tax Appellate Tribunal (Chandigarh Bench) for decision of an important question of law arising out of the Tribunal's order dated 30th January, 1971 in R. A. No. 113 of 1971-72 arising out of I.T.A. No. 1398 of 1970-71 for the assessment year 1968-1969.

"Whether for the non-disclosure of an income which is deemed to be an income under section 41(1), penalty could be levied under section 27(1) (c) of the Income-Tax Act 1961."

Mr. D. N. Awasthy, Advocate with Mr. B. K. Jhingan, Advocate, for the applicant.

K. S. Suri, Advocate with Lakhinder Singh, Advocate, for the respondent.

JUDGMENT

Mittal, J.—(1) This order will dispose of Income-tax Reference Nos. 39 to 41 of 1973 which involve common questions of law and fact.

(2) Briefly, the facts of the references are that during the financial year relevant to the assessment year 1968-69, the firm known as Behari Lal-Pyare Lal (hereinafter referred to as 'the firm') received an amount of Rs. 4,498 as refund from the Sales-Tax Department. This amount was credited in the Personal account of Lachhman Dass and Sat Parkash, the two partners of the firm,

equally. It was not entered in the returns of income of the firm or two partners. The reason stated by the assesseees was that the refund related to the earlier period *when the firm was constituted differently* and that it was not the *income of the present firm*. The Income-tax Officer, however, treated it as 'deemed income' under section 41(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the 1961 Act') and added the same in computing the *total income of the firm*. On appeal, the Appellate Assistant Commissioner confirmed the order of the Income-tax Officer. Further appeal to the Income-tax Tribunal was dismissed. The Inspecting Assistant Commissioner levied penalties on all the assesseees *under section 27(1)(c) of the 1961 Act* holding that they were defaulters for not showing that income in the returns. Appeals were filed before the Tribunal by the assesseees against the orders of the Inspecting Assistant Commissioner. The Tribunal deleted the penalties imposed on the firm, and also on each of the partners holding that the sums received by them under section 41(1) of the 1961 Act were not included in the term 'income' and that the said sums were deemed to be income of the assesseees under the aforesaid section. It further observed that an income which is deemed as income does not lead to concealment of income because the amount is taken as the assesseees' income by a legal fiction. In the opinion of the Tribunal, legal fiction does not establish concealment. The Commissioner of Income-tax moved applications for making references under section 256(1) to the High Court and the following question was referred for the opinion of this Court in all the references :—

"Whether for the non-disclosure of an income which is deemed to be an income under section 41(1), penalty could be levied under section 271(1)(c) of the Income-tax Act, 1961."

This is how the matter is before us. From the perusal of the question, it is clear that it is an abstract question of law. In order to determine the question, it is necessary to refer to the following provisions of the 1961 Act.

"2(24) 'Income' includes—

(i) *	*	*	*	*
(ii) *	*	*	*	*
(iii) *	*	*	*	*
(iv) *	*	*	*	*

The Commissioner of Income-tax Haryana, H.P. & Delhi, III New Delhi v. M/s. Behari Lal Pyare Lal Ambala City (R. N. Mittal, J.)

- (v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59.

271(1) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act is satisfied that any person—

- (a) * * * * *
- (b) * * * * *

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty,—

- (iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished.”

(3) Section 4 is a charging section and says that income-tax shall be charged for any assessment year at the rates prescribed by any Central Act in respect of the total income of previous year or years as the case may be of every assessee. Section 5 defines the total income of the assessee. According to clause (a) of sub-section (1) of section 5, the total income of the previous year includes all income received or deemed to be received in India by an assessee in such year. Section 41(1) says that where deduction has been made in the assessment for any year in respect of expenditure, incurred by assessee, and subsequently during any previous year the assessee has obtained any amount in respect of such expenditure, the amount obtained by him shall be deemed to be profits and gains of business and shall be chargeable to income-tax as the income of that previous year, whether the business is in existence or not. Section 271, relates to imposition of penalties, in case of failure of an assessee to furnish returns, comply with notices, concealment of income etc. Clause (c) of sub-section (1) says that in case the Income-tax Officer or the Appellate Assistant Commissioner, is satisfied regarding the concealment of particulars of any income or furnishing of inaccurate particulars of such income, he may direct such person to pay certain penalties.

(4) The question to be resolved is whether the 'deemed income' under section 41(1) shall be taken as 'income' as used in section 271(1)(c) for the purposes of imposition of penalty. The question, in our view, does not present any difficulty as the word 'income' has been defined in the Act and it includes income under section 41. A reading of sections 4 and 5 further shows that the 'deemed income' under section 41 shall be liable to tax under section 4, as such an income will be as good an income as income from any other source mentioned in the definition clause. According to section 271, the concealment of income or furnishing of inaccurate particulars regarding any income would entitle the Income-tax Officer and the Appellate Assistant Commissioner to impose penalty. Therefore, if income under section 41 is concealed, the provisions of section 271 are attracted provided other conditions in that section are fulfilled. The officers concerned have, however, to determine as to whether the income so received fulfilled other conditions for imposition of penalty. A learned Bench of this Court in *Commissioner of Income-tax Punjab v. Aya Singh Ishar Singh* (1) has taken a similar view though on different grounds. It has been held by it that if an income has accrued, whether it actually accrued or whether it accrued as a result of the deeming provisions of the Act, will not make any difference. An income which has accrued as a result of the deeming provisions of the Income-tax Act, can form the basis for levy of penalty. We are respectfully in agreement with the conclusions arrived at by the learned Bench. The learned counsel for the respondents has referred to *Commissioner of Income-tax Punjab, v. D. D. Puri*, (2). The facts of that case are distinguishable and the observations made therein are of no assistance to him.

(5) For the reasons recorded above, our reply to the question is that penalty can be levied under section 271(1)(c) of the Income Tax Act, 1961, for non-disclosure of an income which is deemed to be an income under section 41(1) in case other conditions of that section are held to be satisfied. In view of the circumstances of this case, we leave the parties to bear their own costs.

M. S. Gujral, J.—I agree.

N. K. S.

(1) (1973) 92, I.T.R. 182.

(2) (1967) 64 I.T.R. 162.