

**(1989) 01 P&H CK 0023**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Income-tax Reference No"s. 201 and 202 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Mool Chand Behari Lal

RESPONDENT

**Date of Decision:** Jan. 10, 1989

**Acts Referred:**

- Income Tax Act, 1961 - Section 271(1), 274, 275

**Citation:** (1989) 178 ITR 665

**Hon'ble Judges:** S.S. Sodhi, J; Gokal Chand Mital, J

**Bench:** Division Bench

**Advocate:** L.K. Sood, for the Appellant; None, for the Respondent

**Judgement**

S.S. Sodhi, J.

The matter here pertains to the imposition of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), after the deletion of Section 274(2) of the Act, by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976. There is also a question of limitation raised with regard to the penalties imposed.

2. The two assessment years in question here are 1967-68 and 1968-69. The Inspecting Assistant Commissioner of Income Tax levied a penalty of Rs. 1,200 in respect of the assessment year 1967-68 and Rs. 17,000 for the assessment year 1968-69 u/s 274 read with Section 271(1)(c) of the Act. The penalties imposed stand challenged on legal ground. The necessary dates and information relevant to the controversy for the two assessment years in question are as under :

|                | Assessment Year | Assessment Year |
|----------------|-----------------|-----------------|
|                | 1967-68         | 1968-69         |
| "(Return filed | 22-9-1967       | 5-9-1968        |

|  |           |           |
|--|-----------|-----------|
| (ii) Origin I ssessment completed  | 19-8-1969 | 21-1-1970 |
| (iii) Return in response to notice under section 148   | 12-7-1971 | 12-7-1971 |
| (iv) Assessment under section 147 read with section 144.   | 29-3-1975 | 29-3-1975 |
| (v) Penalty proceedings initiated on   | 29-3-1975 | 29-3-1975 |
| (vi) Application dated March 31, 1975 u/s 146  | 31-3-1975 | 31-3-1975 |
| (vii) Penalty proceedings in relation to the assessment order dated March 29, 1975 dropped on                            | 31-3-1975 | 31-3-1975 |
| (viii) Fresh assessment in pursuance of acceptance of section 146 application  | 28-2-1976 | 28-2-1976 |
| (ix) Penalty proceedings initiated on  | 28-2-1976 | 28-2-1976 |
| (x) Reference u/s 274(2) of the Income-tax Act, 1961, by the Income-tax Officer to the Inspecting Assistant Commissioner | 23-2-1978 | 23-2-1978 |
| (xi) Notice by the Inspecting Assistant Commissioner under section 274   | 25-2-1978 | 25-2-1978 |
| (xii) Penalty imposed  | 18-3-1978 | 18-3-1978 |

3. The assessee, in the first instance, challenged the penalties imposed on the ground of limitation. This was repelled by the Tribunal leading to the following two questions being referred for the opinion of this court:

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the order of the Inspecting Assistant Commissioner dated March 18, 1978, imposing a penalty of Rs. 1,200 u/s 271(1)(c) was not time-barred u/s 275(1)(b) and, therefore, not void ab initio ?

(ii) Whether, in view of the fact that the Income Tax Officer had once exercised his discretion in the matter of imposition of penalty u/s 271(1)(c) by dropping the penalty proceedings, vide his order dated March 31, 1975, the Tribunal was right in law in holding that penalty proceedings for the default which was existent even before the Income Tax Officer exercised his discretion, vide his order dated March 31, 1975, could again be initiated for the same default ?"

4. The other issue pertains to the finding of the Tribunal that the Inspecting Assistant Commissioner of Income Tax stood divested of his jurisdiction to impose penalty in the present case, after the Taxation Laws (Amendment) Act, 1975, came into force from April 1, 1976. At the instance of the Commissioner of Income Tax, therefore, for the assessment year 1967-68, the following question has been referred for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the Inspecting Assistant Commissioner had no valid jurisdiction in law to levy penalty u/s 271(1)(c) for the assessment year 1967-68 ?

5. The other question, referred being for the assessment year 1968-69, reads as under :

"Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the Inspecting Assistant Commissioner had no valid jurisdiction in law to levy penalty u/s 271(1)(c)?"

6. Taking up first the issue of limitation raised at the instance of the assessee, the question that falls for determination is, whether limitation u/s 275(1)(b) of the Income Tax Act is to be taken to run from March 29, 1975, or February 28, 1976 ? It was the contention of the assessee that the assessment completed on February 28, 1976, was only in continuation of the earlier proceedings, which commenced with the issue of the notices u/s 148 of the Act, while the earlier order of March 31, 1975, of the Income Tax Officer, dropping the penalty proceedings, it was argued, was a nullity, being without jurisdiction.

7. The contention raised was rightly repelled by the Tribunal, as a bare reading of Section 275 of the Act would show that it prescribes a bar of limitation for the imposition of penalty of two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed. Once an assessment is set aside, the assessment is at large and the rights of the parties are the same as would flow to them if the Income Tax

Officer proceeds to make the assessment from the time of filing of the return. This being so, Section 275 of the Act clearly links the period of limitation with the assessment and, therefore, once assessment is made, limitation for purposes of imposition of penalty becomes referable to the assessment. This being the clear position in law, both the questions referred at the instance of the assessee must be answered in the affirmative, in favour of the Revenue and against the assessee.

8. As regards the two questions referred at the instance of the Commissioner of Income Tax, namely, with regard to the jurisdiction to levy penalty u/s 271(1)(c) of the Act for the assessment years 1967-68 and 1968-69, both these questions have clearly to be answered in the negative, in favour of the Revenue and against the assessee, keeping in view our judgment in ITR No. 55 of 1981 ( [Commissioner of Income Tax Vs. Prem Singh Deviditta Mal](#) , decided on December 2 1988, which fully covers the point raised.

9. The reference is answered accordingly. There will, however, be no order as to costs.