Commissioner of Income Tax Vs Mool Chand Behari Lal

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

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 10, 1989

Acts Referred:
Income Tax Act, 1961 â€" 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

(i) Return filed 22-9-1967 5-9-1968

(ii) Origin l ssessment completed 19-8-1969 21-1-1970

(iii) Return in response to noticeunder 12-7-1971 12-7-1971 section 148

(iv) Assessment under section147 read 29-3-1975 29-3-1975

with section 144.

(v) Penalty proceedings initi tedon 29-3-1975 29-3-1975

(vi) Application d ted M rch 31,1975 u/s 31-3-1975 31-3-1975

146

(vii) Penalty proceedings in rel tionto the 31-3-1975 31-3-1975

ssessmentorder d ted M rch 29,1975

dropped on

(viii) Fresh ssessment in pursu nceof ccept 28-2-1976 28-2-1976

nce of section 146 pplic tion

(ix) Penalty proceedings initi tedon 28-2-1976 28-2-1976

(x) Reference u/s 274(2) of the Income-t 23-2-1978 23-2-1978

x ct, 1961, by the Income-t x Officer

to the Inspecting ssist nt

Commissioner

(xi) Notice by the Inspecting ssist nt 25-2-1978 25-2-1978

Commissionerunder section 274

(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 posi-tion 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 Commis-sioner 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.