**(1978) 10 P&H CK 0005**

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

**Case No:** Income Tax Case No. 23 of 1974

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| COMMISSIONER OF INCOME TAX | | APPELLANT |
| | Vs | |
| DR. SAJJAN SINGH MALIK. | | RESPONDENT |

**Date of Decision:** Oct. 13, 1978

**Acts Referred:**

- Income Tax Act, 1961 - Section 271

**Citation:** (1979) 9 CTR 21

**Hon'ble Judges:** B. S. Dhillon, J

**Bench:** Division Bench

**Judgement**

: B. S. Dhillon, J. - In this petition u/s 256(2) of the Income Tax Act, 1961, the CIT Patiala-I, Patiala, has approached this Court with the prayer that Income Tax Tribunal Chandigarh Bench be directed to refer the following question of law for the opinion of this Court :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that penalty u/s 271(1)(c) was not exigible" ?

2. The assessee is a retired Civil Surgeon. For the assessment year 1969-70 he filed a return of Income on 13th August, 1969, declaring an income of Rs. 3061/-. In this return he showed income from Employees State Insurance at Rs. 8,738/-. University fees at Rs. 216/-, interest at Rs. 50/- and income from dividends at Rs. 22/-. After claiming expenses of about Rs. 6,000/-, the net income was worked out at Rs. 3,061/-. No income from private practice was, however, shown in his return. The Department, however, found that the assessee was carrying on private practice. Thereafter, the assessee was required to prepare an income and expenditure statement which was filed by him on 29th August, 1970, in which the assessee declared income from private practice at Rs. 7,539/- and interest from bank at Rs. 886/-. Consequently, revised return was filed by him on 29th August, 1970, declaring total income at Rs. 14,403/-.

3. During the course of assessment proceedings, the ITO noticed that the assessee had made a gift of Rs. 10,000/-to his son on 25th June, 1968. The assessee having failed to explain the source of the gift, the ITO made an addition of Rs. 4,000/- to the income of the assessee taking it to be the amount representing his income from undisclosed sources. Accordingly an assessment was made on 21st September, 1970, on the total income of Rs. 19,401/-. The assessee challenged the order of the ITO in appeal. The AAC of Income Tax reduced the total income by Rs. 1,745/-. No appeal was filed by the assessee thereafter.

4. At the time of completing the assessment, the penalty proceedings u/s 271(1)(c) of the Act were also initiated by the ITO. The ITO referred the matter no the IAC who imposed upon the assessee a penalty of Rs. 8,475/- u/s 271(1)(c) of the Act. The assessee filed an appeal which was accepted by the Income Tax Tribunal. The revenue approached the Income Tax Tribunal to refer the above mentioned question of law to this Court for its opinion and the Tribunal having refused to do so, the revenue has approached this Court for issuing necessary directions.

5. It cannot be disputed that if the Tribunal on the basis of the material placed before it, without taking into consideration any other factor which ought not to have been taken, after appreciating the evidence came to the conclusion that there was no conscious concealment, in that case the said finding will essentially be a finding of fact and thus no question of law will arise in that case. But if, on the other hand, the Tribunal fell into error in taking into consideration factors which are wholly irrelevant and having misdirected itself in coming to the finding whether there was conscious concealment or not, in that case a question of law shall arise which will have to be referred by the Tribunal to this Court for its opinion. It is in the background of this proposition that the order of the Tribunal by which it came to the conclusion that there was no conscious concealment has to be examined. The Tribunal recorded this finding mainly on the following grounds :-

1. That the assessees return for the assessment year 1965 till 1969 not having been accepted and his income having been enhanced during the proceedings and since no penalty proceedings were taken in connection with the said assessment period, no penalty proceedings could have been initiated for the assessment year 1969-70 which is in question.

2. That the assessees house hold expenditure having been more than the income shown, therefore, he was assessed to another sum of Rs. 4,000/- as income from undisclosed sources and further his gift of Rs. 10,000/- to his son not having been explained, the income was enhanced in the assessment.

3. That the admission of the assessee in filing the revised return in which he disclosed the income at Rs. 7,539/- from private practice and Rs. 886/- as income from interest does not tentamount to concealment of income.

The Tribunal has tried to distinguish the facts of the present case from the facts in a Division Bench decision of this Court in Mahavir Metal Works v. CIT, for coming to the conclusion that the revised return of the assessee will not tentamount to conscious concealment of income.

6. In our considered opinion, the reasons mentioned above are not wholly germane for determining the question involved in the case. Merely because the ITO did not consider it expedient to issue notice of penalty for the assessment years 1965-66, 1966-67, 1967-68, 1968-69 would be no ground for coming to the conclusion that the concealment of income pertaining to the assessment year 1969-70 was not intentional. Similarly the enhancing of assessment to the tune of Rs. 4,000/-, etc., is again not very material on the facts of this case as no penalty has been levied regarding the enhancement of this amount. The penalty has been levied only regarding the concealed income of Rs. 7,539/- from private practice and Rs. 886/-of the interest which income was not disclosed in the original return and by filing the revised return, the assessee admitted this income from the sources mentioned above. Thirdly, the distinction drawn by the Tribunal on the facts and circumstances of the case reported in the above-cited case also does not appear to be based on sound reasoning.

7. From what has been stated above, in our view a question of law which has been mentioned above does arise. We, accordingly, direct the Tribunal to refer the question of law reference to which has already been made in the earlier part of this judgment, to this Court for its opinion. The petition is disposed of accordingly. No. costs.