
JAI SINGH KULBIR SINGH Vs COMMISSIONER OF INCOME TAX.

Income Tax Ref. No. 97 of 1977

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 15, 1984

Acts Referred:

Income Tax Act, 1961 " Section 148

Citation: (1984) 43 CTR 210

Hon'ble Judges: M. R. Sharma, J

Bench: Division Bench

Judgement

: M. R. Sharma, J. - For the asst. yr. 1960-61 the assessee firm filed the return on 22-12-1961. Vide his order dt. 12-3-1965 the ITO created an

income tax liability of Rs. 67,906 against the assessee-firm. On 18-2-1969, the ITO sent a notice u/s. 147(a) 148 of the IT Act, 1961 (hereinafter

called the Act) on the attorney of the assessee to file a revised return on or before 20-3-1969. No such return was filed. On 3-2-1973 the ITO

framed an assessment on best judgment basis and added a sum of Rs. 72,940 to the income of the assessee. Proceedings u/s. 271(1)(a) of the Act

were also initiated against the assessee firm for not filing the return on 2-3-1975. In these proceedings, a sum of Rs. 24,030 was imposed as

penalty on the assessee-firm.

2. The assessee-firm challenged this order before the AAC of IT and the ITAT without any success.

3. The assessee-firm applied to the Id. Tribunal that the following question of law be referred to this court for its opinion :

1. Whether, in view of the facts and circumstances of the case, the assessment was legally and validly initiated and made on the correct person and

is otherwise operative against the appellant who is a non-resident ?

2. That the appellant being not directly served, should not the assessment have been made on S. Khem Singh as representative assessee ?

3. In any case, whether, in view of the facts and circumstances of the case, the appellant was not prevented by sufficient cause for filing the return

particularly when under the same circumstances, the Id. AAC had accepted the same ground as constituting a sufficient cause in respect of the next

year which covered the same period ?

4. Whether, in view of the facts and circumstances of the case, penalty could be legally imposed on the appellant ? 5. Whether, sufficient legal

opportunity had been afforded to the appellant to explain the alleged bogus credits, particularly in view of the letters written by him from time to

time and whether the addition made to the income was legally justified ?

4. The Id. Tribunal, however, referred the following question to us :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that Sri Khem Singh, the attorney of the

non-resident, was an agent of the assessee for the limited purpose, namely, for receiving the notice u/s. 148 of the IT Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment in the name of agent will be

completed only when he is appointed as agent by the department in view of the provisions contained in ss. 161 to 164 of the IT Act, 1961,

otherwise assessment is to be made in the name of the non-resident himself ?

3. Whether, the penalty imposed on the non-resident is vitiated by virtue of the fact that the notice u/s. 148 of the IT Act, 1961, was served on

Shri Khem Singh, attorney of the non-resident ?

At this stage we would like to mention that the assessee had also challenged the initiation of proceedings for reopening the assessment. That matter

was decided in favour of the assessee in Jai Singh Vs. Commissioner of Income Tax, . After making an exhaustive review of the authorities on the

subject, the Division Bench observed as under :

In so far the present case is concerned, as already noticed, the case of the assessee was reopened by the ITO on the basis of a vague information

that certain firms were engaged in the racket of hawala business, and the farthest that the revenue has been able to reach, is that the six firms whose

names are mentioned in the earlier part of the judgment, were also found to be members of the said group of firms. There is, however, neither any

allegation nor evidence to show that these six firms had entered into bogus transactions with the applicant in this case. This being so, the present

case would be covered by the dictum of the Supreme Court in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, and Income

Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, , which were followed by our court in Rajive Textile Mills Vs.

Commissioner of Income Tax, .

6. It is, thus, obvious that the very basis of the legality of the present proceedings has been held to be non-existent. In this view of the matter, for us

to propose any answer to the questions framed by the Id. Tribunal. We are further of the opinion that question No. 4 claimed by the assessee

should have been referred to us. This question reads as under :

Whether, in view of the facts and circumstances of the case, penalty could be legally imposed on the appellant ?

7. Since the decision on the aforementioned question is the real crux of the controversy between the parties, we reframe this question on the basis

of the principle enunciated in Addl. Commissioner of Income Tax Vs. Dongarsidas Biharilal, , and in view of the earlier Division Bench judgment of

this court in Jai Singhs case (supra), answer it in favour of the assessee and against the revenue with no order as to costs.