

(1978) 09 AHC CK 0023

Allahabad High Court

Case No: Income-tax Reference No. 378 of 1975

Addl. Commissioner of Income
Tax

APPELLANT

Vs

Atma Singh Steel Rolling Mills

RESPONDENT

Date of Decision: Sept. 6, 1978**Acts Referred:**

- Income Tax Act, 1961 - Section 148, 271(1)

Citation: (1979) 11 CTR 246 : (1979) 120 ITR 590 : (1979) 1 TAXMAN 30**Hon'ble Judges:** Satish Chandra, C.J; M.B. Farooqi, J**Bench:** Division Bench**Advocate:** A. Gupta, for the Appellant; R.K. Gulati, for the Respondent**Final Decision:** Dismissed

Judgement

Satish Chandra, C.J.

This is a consolidated reference for three assessment years, namely, 1961-62, 1962-63 and 1963-64. The question of law referred for our opinion is whether the Explanation added to Section 271(1)(c) of the I.T. Act, 1961, with effect from 1st April, 1964, was applicable to penalty proceedings for the aforesaid three assessment years, even though the return for each of these years was filed after 1st April, 1964.

2. The assessee is a registered firm. It runs a steel rolling mill at Kanpur. For the assessment year 1961-62, the assessee filed its return on the 24th August, 1961. It filed a revised return on the 13th September, 1961. The assessment was completed by the order dated 14th September, 1961. Assessments for the assessment years 1962-63 and 1963-64 were completed on the 19th February, 1963, and the 24th December, 1963, respectively, u/s 143(3) of the Act. It is thus evident that the returns were filed prior to the date of the assessment orders. In other words, the returns of income for all these three assessment years were filed long before the 1st April, 1964, when Section 271(1)(c) was amended and an Explanation added to Clause (c)

of Section 271(1).

3. During the course of assessment proceedings for the assessment year 1964-65, the ITO discovered certain Hundi loans in the names of various parties. He, therefore, reopened the assessments for the years 1961-62, 1962-63 and 1963-64.

4. In due course the ITO drew up penalty proceedings for the three assessment years in question. In response to notices u/s 148 the assessee filed returns on the 17th April, 1967, for all these three years.

5. Since the minimum imposable penalty exceeded in each of the years Rs. 1,000, the ITO referred the cases to the IAC. The IAC repelled the pleas of the assessee and held that it was a clear case of concealment of income. He imposed penalties of Rs. 10,000, Rs. 3,300 and Rs. 25,000, respectively, for each of the aforesaid years.

6. The assessee took the matter in appeal to the Tribunal. In appeal the Tribunal held that Section 271(1)(c) as it stood before its amendment by the Finance Act, 1964, was applicable. The Explanation added by this Finance Act was hence not available to the department.

7. On merits, it was held that the assessee could not be held guilty of concealment of particulars of its income or of furnishing inaccurate particulars thereof in any of the three years in question. Hence this reference at the instance of the Commissioner.

8. Learned counsel for the revenue submitted that in respect of penalty proceedings the view of this court is that the law applicable was as it stood on the date of the commission of the default. The default in respect of Clause (c) of Section 271(1) for concealment of income is committed when the return is filed. In these cases, the returns were filed on 17th April, 1967. Hence, the provision, as it stood after amendment on 1st April, 1964, including the Explanation, was applicable.

9. Learned counsel relied upon [Commissioner of Income Tax Vs. Data Ram Satpal](#), . In this case this court held that the principle that the law applicable under the I.T. Act to a particular assessment year is the law prevailing on the first day of April of that year does not apply to penalty proceedings, as penalty proceedings are not part of the assessment proceedings. The law which will apply to penalty proceedings will be the law as it stood on the date when the default is committed. In the case of concealment or of furnishing inaccurate particulars, the date of such default will be the date on which the return is filed, irrespective of the assessment year to which it related. On a plain reading of the amended provision of Section 271 it is clear that anyone who files an incorrect return after 1st April, 1964, is liable to be dealt with in accordance with the amended provision regardless of the year to which the return relates.

10. In that case, the assessment year was 1963-64, for which the return was filed on October 1, 1964.

11. This decision was reaffirmed by this court in [Commissioner of Income Tax Vs. S. Devendra Singh](#), . In that case, the assessment year in question was 1962-63 but the return was filed on the 20th January, 1965, that is to say, after the coming into force of the Explanation to Section 271(1)(c), which was added on the 1st April, 1964. It was held that the Explanation was applicable.

12. The case of [Commissioner of Income Tax Vs. Ram Achal Ram Sewak](#), is, however, more in point. In that case, the assessment year in question was 1963-64. The original return for this year was filed before the 1st April, 1964. The ITO drew up penalty proceedings. In response to the notice u/s 148 a revised return was filed on 9th August, 1965. The Bench of this court held that the Explanation to Section 271(1)(c) or the provision as it stood after its amendment on April 1, 1964, could not be applied because the default was committed when the original return was filed.

13. That was before April 1, 1964. The filing of the revised return was immaterial. The view taken in [Commissioner of Income Tax Vs. Ram Achal Ram Sewak](#), was reaffirmed by this court in [Addl. Commissioner of Income Tax Vs. Jiwan Lal Shah](#), . It was held that for purposes of penalty proceedings the relevant return was the original return and not the return filed subsequent thereto.

14. In the present case, the original returns for all the three years were filed long before the 1st April, 1964. The subsequent returns which were filed on the 17th September, 1967, in response to the notice u/s 148 were immaterial and not relevant. The submission raised on behalf of the revenue that the provisions as they stood after their amendment on the 1st April, 1964, were applicable to/these three years is hence not ten able.

15. The question as framed by the Tribunal expresses the filing of the return after the 1st April, 1964, though the original return was filed before that date. We, therefore, reframe the question in order to bring out the true controversy as follows :

" Whether, on the facts and in the circumstances of the case, the Explanation to Section 271(1)(c) of the Income Tax Act, 1961, was applicable to proceedings for the assessment years in question for which the original returns were filed before, but subsequent returns were filed after 1st April, 1964?"

and answer the same in the negative, in favour of the assessee and against the department. The assessee would be entitled to costs which are assessed at Rs. 200.