

## Commissioner of Income Tax Vs Ram Lal Vohra

**Court:** Allahabad High Court

**Date of Decision:** May 19, 1978

**Acts Referred:** Income Tax Act, 1961 " Section 274(2)

**Citation:** (1981) 129 ITR 473

**Hon'ble Judges:** Satish Chandra, C.J; C.S.P. Singh, J

**Bench:** Division Bench

**Advocate:** A. Gupta, for the Appellant; D.C. Chaturvedi, for the Respondent

**Final Decision:** Disposed Of

### Judgement

C.S.P. Singh, J.

The Income Tax Appellate Tribunal, Delhi Bench " A ", has referred the following question for our opinion:

Whether, on the facts and in the circumstances of the case, the orders of penalty passed by the IAC on 17-3-1973 were within time and within

his jurisdiction having regard to the provisions contained in Sections 274 and 275 of the Income Tax Act, 1961, and the amendments effected to

those sections by the Taxation Laws (Amendment) Act of 1970?

2. The reference relates to the years 1967-68 and 1968-69. The assessment for both these years was completed, but subsequently was reopened

u/s 148 of the Act. For the years 1967-68, it was completed on December 11, 1970, and for the year 1968-69, also on the same date. The final

income determined after the reassessment was Rs. 11,390 for the assessment year 1967-68 and Rs. 16,423 for the assessment year 1968-69.

Penalty proceedings were initiated by the ITO for both those years on December 11, 1970, and the matter was referred to the IAC u/s 274(2) of

the Act as the minimum penalty imposable was more than Rs. 1,000. The IAC imposed a penalty of Rs. 6,500 for the year 1967-68 and Rs.

16,000 for the year 1968-69. The order for both these years was passed on March 17, 1973. On appeal, it was urged that as the assessment

orders were passed on December 11, 1970, the penalty could be imposed only within a period of two years from the completion of the

assessment in view of Section 275(2) of the Act as it stood before its amendment on April 1, 1971. The Tribunal rejected the contention that the

penalty proceedings were time barred, on the view that as the limitation for passing the penalty order had been extended by an amending Act with

effect from April 1, 1971, i.e., before the limitation under the unamended Section 275 had run out, the orders were within limitation. It, however,

accepted the alternative contention raised on behalf of the assessee that with the amendment of Section 274(2) of the Act, it was the ITO who had

jurisdiction to pass a penalty order, and not the IAC. As the reference is at the instance of the Additional Commissioner, the question as to

whether the penalty order was passed within limitation is academic, for, the question has been answered in favour of the department. It is settled

that, on a reference, the court is not obliged to answer academic questions of law referred to it by the Tribunal.

3. We, accordingly, confine our answer to the question as to whether the IAC could pass the impugned penalty order in view of the amendment to

Section 274(2). In ITR No. 306 of 1974 Commissioner of Income Tax Vs. Om Sons, , we have held that after the amendment to Section 274(2)

of the Act, the ITO alone had jurisdiction to impose penalty in cases where the concealment or furnishing of inaccurate particulars is up to Rs.

25,000. As in the present case, the order of penalty has been passed by the IAC, we answer the question referred by saying that the IAC had no

jurisdiction to pass the penalty order on the 17th March, 1973. We decline to express any opinion as to whether the penalty order was within

limitation. The assessee is entitled to its costs which are assessed at Rs. 200. Counsel's fee is assessed at the same figure.