

(1991) 04 AHC CK 0123

Allahabad High Court

Case No: IT Reference No. 292 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Fakir Chand Hazari Lal

RESPONDENT

Date of Decision: April 19, 1991**Acts Referred:**

- Income Tax Act, 1961 - Section 256(1), 271(1)(c), 274, 274(2)

Citation: (1992) 60 TAXMAN 19**Hon'ble Judges:** R.K. Gulati, J; K.P. Singh, J**Bench:** Division Bench**Final Decision:** Disposed Of

Judgement

Gulati, J.

At the instance of the revenue, u/s 256(1) of the income tax Act, 1961 ("the Act"), the following question of law had been referred for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty u/s 271(l)(c) of the income tax Act, 1961, on or after 1-4-1976, i.e., the date from which his power to impose the penalty was taken away by the Taxation Laws (Amendment) Act, 1975 ?"

The controversy involved in the aforesaid question is where the penalty proceedings were initiated by the ITO for the concealment of income u/s 271(1)(c) of the Act before the enforcement of the Taxation Laws (Amendment) Act, 1975, which came into effect from 1-4-1976, and the IAC levied the penalty on the reference being made to him under sub-section (2) of section 274 of the Act after 1-4-1976, i.e., after the deletion of sub-section (2) of section 274, whether such a penalty order could in law be sustained ? A similar controversy was decided by a Division Bench of this Court in [Commissioner of Income Tax Vs. Om Sons](#), where it was held that a Court or the Tribunal deciding the matter must not only be possessed of jurisdiction

initially but also be clothed with the power to decide the matter when the final order is passed. Thus, as on the date when the IAC passed the final order, his jurisdiction to do so had been taken away by the amendment in section 274(2), the order passed by him was, thus, without jurisdiction. The decision in the above case has been followed by this Court in a number of other cases involving similar controversy. A reference in this connection may be made to [Commissioner of Income Tax Vs. Jagannath Prasad Nankoo Prasad](#), and [Commissioner of Income Tax Vs. Lal Chand Jain](#), in which one of us (R.K. Gulati, J.), was a party. The view expressed in this case was as under:

"Held, that, as on the date when the Inspecting Assistant Commissioner passed his final order, his jurisdiction to do so had been taken away by the amendment of section 274(2), the order passed by the Inspecting Assistant Commissioner was without jurisdiction. The legislative intention was to destroy the continuance of the power of the Inspecting Assistant Commissioner even in respect of matters which had already been referred to him by the income tax Officer prior to April 1, 1976, and the Inspecting Assistant Commissioner had no jurisdiction to pass the penalty order u/s 271(1)(c) on or after April 1, 1976, and the proper authority who had jurisdiction to deal with the matter of imposition of penalty was the income tax Officer." (p. 449)

2. Following the view taken in the aforesaid cases, with which we are bound, we hold that the IAC had no jurisdiction to pass the penalty order after the enforcement of the Taxation Laws (Amendment) Act, 1975, with effect from 1-4-1976, even though the proceedings for levy of penalty were initiated before coming into force of the Amendment Act. We, accordingly, answer the question referred to us in the affirmative, in favour of the assessee and against the department. There shall be no order as to costs.