
(1987) 11 MP CK 0002

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 139 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Madhya Bharat Tyres

RESPONDENT

Date of Decision: Nov. 25, 1987

Acts Referred:

- Income Tax Act, 1961 - Section 147(a), 148, 18(1)(c), 18(3), 256(1)

Hon'ble Judges: R.K. Varma, J; G.G. Sohani, J

Bench: Division Bench

Advocate: R.C. Mukati, for the Appellant; K.B. Joshi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.K. Varma, J.

This reference by the Tribunal, Indore Bench, u/s 256(1) of the income tax Act, 1961 ("the Act") is made at the instance of the Commissioner, MP-I Bhopal whereby the following question of law has been referred for opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Inspecting Assistant Commissioner had no jurisdiction to levy penalties, and, hence, his penalty orders were illegal and without jurisdiction when the proceedings to levy penalties u/s 271(1)(c) of the income tax Act, 1961, for the assessment years 1966-67 to 1969-70 and 1973-74 to 1975-76, were initiated by the ITO before 1-4-1976, but the references to the Inspecting Assistant Commissioner u/s 274(2) of the income tax Act, -1961, were made by the income tax Officer after the 1st April, 1976?

The aforesaid reference has arisen in the following circumstances:

The non-applicant assesses is a registered firm deriving income from sale of tyres, tubes and other motor parts. The original assessments for the assessment years 1966-67 to 1969-70 were completed prior to 19-10-1974, on which date search was

conducted at the business premises of the assessee-firm in which certain books and other documents were seized by the income tax Department. After the search, proceedings u/s 147(a) of the Act were initiated for all the assessment years aforesaid and accordingly notices were issued u/s 148 of the Act and the assessee filed revised returns for all the above years. On assessments being made by the ITO, the assessee was held to have concealed incomes in respect of each year of assessment and the ITO, therefore, issued penalty notices and referred the cases to the IAC u/s 274(2) of the Act since the amount of income as determined by the ITO on assessment in respect of each assessment year exceeded a sum of Rs. 25,000. The aforesaid reference to the IAC u/s 274(2) was made by the ITO after 1-4-1976, on which date the Taxation Laws (Amendment) Act, 1975 whereby sub-section (2) of section 274 was deleted, became effective. Sub-section (2) of section 274 before its deletion on 1-4-1976 read as under:

Procedure.- (1) ****

(2) Notwithstanding anything contained in clause (iii) of sub-section (1) of section 271, if in a case falling under clause (c) of that sub-section, the amount of income (as determined by the income tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the income tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.

Consequent on the search and seizure being made by the department on 19-10-1974, the assessee submitted revised returns in respect of the assessment years 1973-74 to 1975-76. For these years also the ITO initiated penalty proceedings and referred the cases to the IAC after 1-4-1976 for levy of penalty.

2. The IAC imposed penalties u/s 271(1)(c) of the Act by his orders dated 23-3-1978 in respect of all the cases of the assessee pertaining to the assessment years 1966-67 to 1969-70 and 1973-74 to 1975-76.

3. Against the orders of the IAC imposing penalties for the various years, the assessee filed appeals before the Tribunal raising, inter alia, a legal contention that the reference by the ITO to the IAC u/s 274(2) after 1-4-1976, did not clothe the IAC with jurisdiction to impose penalty since the relevant sub-section (2) of section 274 had already become non-existent on 1-4-1976 having been omitted by virtue of the Taxation Laws (Amendment) Act, 1975.

4. The learned Tribunal allowed the appeals of the assessee and held that the IAC had no jurisdiction to levy penalties by reason, of the fact that section 274(2) was omitted by amendment with effect from 1-4-1976. The learned Tribunal, therefore, cancelled the penalties imposed in the above mentioned cases of the assessee for all the seven assessment years.

5. The department had contended before the Tribunal that since the assessments for the relevant years were completed by the ITO and it had initiated penalty proceedings before 1-4-1976, the provisions of sub-section (2) of section 274 were applicable to these cases and hence the IAC was quite competent to impose penalties in these cases.

6. On an application for reference u/s 256(1) made by the Commissioner, the learned Tribunal has referred a question of law as stated hereinabove for opinion of this Court.

7. The learned counsel for the assessee has cited two decisions of this Court in support of his submission that the IAC had no jurisdiction to levy penalties and hence his penalty orders were illegal and without jurisdiction when the proceedings to levy penalties u/s 271(1)(c) for the assessment years 1966-67 to 1969-70 and 1973-74 to 1975-76 were initiated by the ITO before 1-4-1976 but the references to the IAC u/s 274(2) were made by the ITO after 1-4-1976.

8. The first decision relied upon by the learned counsel for the assessment is CIT v. A.N. Tiwari [1980] 124 ITR 680 (MP) wherein it has been observed thus:

...Further, the words "the ITO shall refer the case to the IAC who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty" as they occur in section 274(2) clearly signify that the jurisdiction of the IAC for the purpose of imposing penalty is derived on a reference made to him by the ITO. Therefore, what is important is to see whether the reference was validly made to the IAC u/s 274(2)... (p. 681)

In the instant case when the reference was made by the ITO to the IAC for the purposes of imposing penalty u/s 274(2) after 1-4-1976, the provision contained in sub-section (2) of section 274 had already been deleted by the Taxation Laws (Amendment) Act, 1975 and, therefore, the reference made to the IAC was not valid and as such did not clothe the IAC with jurisdiction to impose penalty.

9. The other case cited by the learned counsel for the assessee is Bankatlal Tody v. CWT [Misc. Civil Case No. 155 of 1978 dated 12-3-1982] in which the effect of amendment of an analogous provision of section 18(3) of the Wealth-tax Act, 1957, by the Taxation Laws (Amendment) Act, 1975 has been considered. In that case the reference was made by the WTO on 29-1-1977 when the provisions of section 18(3) requiring the WTO to refer the case to the IAC, Wealth-tax were substituted by the Taxation Laws (Amendment) Act, 1975. It was held that the IAC, Wealth-tax had no jurisdiction to impose penalty u/s 18(1)(c) after the amendment of section 18(3) by the Taxation Laws (Amendment) Act, 1975 with effect from 1-4-1976.

10. Relying on the two decisions cited by the learned counsel for the assessee as aforesaid, we hold that the IAC had no jurisdiction to levy penalties and hence his penalty orders were illegal and without jurisdiction when the proceedings to levy

penalties u/s 271(1)(c) for the relevant assessment years were initiated by the ITO before 1-4-1976 but the references to the IAC u/s 274(2) were made by the ITO after 1-4-1976. Accordingly our answer to the question of law under reference is in the affirmative and against the department. Reference answered accordingly.

The parties shall bear their own costs of this reference.

No costs.