(1982) 01 MP CK 0007

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 260 of 1979

Commissioner of Income Tax	APPELLANT
Vs	
Badri Bholaram	RESPONDENT

Date of Decision: Jan. 27, 1982

Acts Referred:

- Income Tax Act, 1922 - Section 28(1)
- Income Tax Act, 1961 - Section 256, 271, 274(2), 275, 297(2)

Citation: (1983) 143 ITR 905 : (1983) 15 TAXMAN 565

Hon'ble Judges: K.N. Shukla, J; G.G. Sohani, J

Bench: Division Bench

Advocate: R.C. Mukati, for the Appellant; M.S. Chaudhary, for the Respondent

Judgement

Sohani, J.
By this reference u/s 256(1) of the I.T. Act, 1961, the Income Tax Appellate Tribunal, Indore Bench, has referred the following questions of law to this court for its opinion :

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that even though the original authority completed the order levying the penalty within the limitation period prescribed in Section 275, he would have no jurisdiction to pass a fresh orders at this stage if the matter was remanded to him and, therefore, in not remanding the matter to the ITO for passing fresh orders u/s 271(1)(c) in accordance with the provision of law ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the penalty order passed u/s 28 altogether, especially when the provisions of Section 28(1)(c) of the Act of 1922 are in pari materia with the provisions of Section 271(1)(c) of the I.T. Act, 1961, and deal with the same subject-matter and the completion of the proceedings under the Act of 1922 could be attributed to the jurisdiction vested under the Income Tax Act, 1961 ?"

2. The material facts giving rise to this reference briefly are as follows :

3. The assessee is a registered firm and the assessment year in question is 1957-58. The assessment was completed on 29th March, 1962, but, on appeal, the AAC set aside the order of assessment and directed the ITO to make a fresh assessment. In compliance with that order, the ITO passed a fresh order of assessment on 22nd November, 1972, and also directed that a notice be issued to the assessee u/s 28(1)(c) of the Indian I.T. Act, 1922, to show cause why penalty should not be imposed on the assessee. The ITO was not satisfied with the explanation submitted by the assessee. The ITO held that the assessee had concealed income and was accordingly liable for penalty u/s 28(1)(c) of the Indian I.T. Act, 1922. The ITO further held that the tax on the difference between the assessed income and the returned income was Rs. 96,120 and a penalty of Rs. 96,500 was accordingly imposed on the assessee. The appeal preferred by the assessee before the AAC was dismissed but on further appeal, the Tribunal held that proceedings for penalty should have been initiated against the assessee in accordance with the provisions of the I.T. Act, 1961, but those proceedings were initiated under the Indian I.T. Act, 1922, the order imposing penalty was bad in law. The Tribunal further held that the matter could not be remanded to the ITO with a direction to proceed afresh under the provisions of the I.T. Act, 1961, as no penalty could be imposed at that stage because of the limitation prescribed by Section 275 of the I.T. Act, 1961. In this view of the matter, the Tribunal allowed the appeal preferred by the assessee and set aside the order of penalty imposed by the ITO. Aggrieved by that order, the Department sought a reference and it is at the instance of the Department that the aforesaid questions of law have been referred to us for our opinion.

4. The main question that arises for consideration is whether the Tribunal was right in holding that the proceedings for penalty should have been initiated under the provisions of the I.T. Act, 1961, and not under the provisions of the Indian I.T. Act, 1922. In the instant case, the order of assessment, on remand, was passed by the ITO on 22nd November, 1972, and on that date, he had issued a notice to the assessee to show cause why penalty should not be imposed on the assessee under the provisions of Section 28(1)(c) of the Indian I.T. Act, 1922. Section 297(2)(g) of the I.T. Act, 1961, provides that any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under that Act. This provision has been considered by the Supreme Court in Jain Bros. and Others Vs. The Union of India (UOI) and Others, , where it has been held that for the imposition of penalty in respect of any assessment for the year ending on March, 1962, or any earlier year, which is completed after the 1st day of April, 1962, the proceedings have to be initiated and the penalty imposed in accordance with the provisions of Section 271 of the I.T. Act, 1961. In the instant case, the assessment was completed on 22nd November, 1972. As the crucial date for purposes of penalty is the date of

completion of assessment, penalty proceedings against the assessee should have been initiated and penalty imposed in accordance with the provisions of Section 271 of the I.T. Act, 1961, in view of the decision of the Supreme Court in Jain Bros. and Others Vs. The Union of India (UOI) and Others, .

5. The question, then, that arises for consideration is whether the Tribunal was right in not remanding the case to the ITO for proceeding under the provisions of the I.T. Act, 1961. Now, the Tribunal did not remand the case to the ITO because of the limitation prescribed by Section 275 of the Act. The Tribunal, however, did not consider whether the ITO had jurisdiction to issue notice u/s 271(1)(c) of the Act in view of the provisions of Section 274(2) of the I.T. Act, 1961, as they stood on 22nd November, 1972. It was not disputed before us that under those provisions, the IAC and not the ITO had jurisdiction to issue a notice and impose penalty as the provisions of Section 274(2) of that Act were attracted, in the circumstances of the case. Thus, the ITO had no jurisdiction on 22nd November, 1972, to proceed to impose penalty on the assessee by issuing a show-cause notice and the penalty proceedings were vitiated altogether. This aspect of the matter was, however, not considered by the Tribunal while coming to the conclusion that the order of penalty passed by the ITO under the Indian I.T. Act, 1922, was vitiated altogether. But as held in COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD., , if a particular question of law is referred for the opinion of the High Court, the High Court can consider another aspect of the matter as regards the same question of law. Therefore, in our opinion, the order of penalty imposed by the ITO was vitiated altogether because he had no jurisdiction to impose penalty in the circumstances of the case by virtue of the applicability of the provisions of Section 274(2) of the Act of 1961 as they stood on the material date, to the facts of the case. In this view of the matter, it is not necessary for us to consider the question as to whether the bar of limitation prescribed by Section 275 of the Act of 1961 was or was not attracted. We, therefore, decline to answer the first question referred to us in view of our answer to the second question.

6. In our opinion, therefore, the Tribunal was right in holding that the order of penalty imposed by the ITO under the Act of 1922 was vitiated altogether. Our answer to the second question referred to us is, therefore, in the affirmative and against the Department.

7. Reference answered accordingly.

8. In the circumstances of the case, parties shall bear their own costs of this reference.