

(1980) 10 MP CK 0003

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 143 of 1978

Additional Commissioner of
Income Tax

APPELLANT

Vs

Raichand

RESPONDENT

Date of Decision: Oct. 21, 1980

Acts Referred:

- Income Tax Act, 1961 - Section 271(1)(c), 274(2), 275

Citation: (1983) 14 TAXMAN 523

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

Bench: Division Bench

Advocate: S.C. Bagdia, for the Appellant; A.K. Chitale, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G.G. Sohani, J.

As directed by this Court, the Tribunal, Indore Bench, has referred the following question of law to this Court for its opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the order imposing penalty on the assessee-firm was illegal on the ground that it was barred by limitation, having regard to the provisions of section 275 of the income tax Act, 1961, as amended by section 50 of the Taxation Laws (Amendment) Act, 1970?

The material facts giving rise to this reference briefly are as follows: The assessee is a registered firm deriving income from business in grains, cotton-seeds, etc. For the assessment year 1968-69, the ITO assessed the total income of the assessee at Rs. 83,930 as against the returned income of Rs. 57,753. The ITO also initiated penalty proceedings u/s 271(1)(c) of the income tax Act, 1961 ("the Act") and referred the

case to the IAC u/s 274(2) of the Act. The IAC, by his order dated 22-1-1972, imposed a penalty of Rs. 25,000 on the assessee u/s 271(1)(c). Aggrieved by the order passed by the IAC, the assessee preferred an appeal before the Tribunal. It was contended before the Tribunal that the assessment proceeding for the year 1968-69 were completed on 9-12-1969 and, in view of the provisions of section 275 of the Act prescribing the period of limitation, the order passed by the IAC on 22-1-1972 was barred by time and hence illegal. The Tribunal upheld this preliminary objection and cancelled the penalty imposed by the IAC. Aggrieved by this order, the department submitted an application for making a reference, but that application was rejected. The department, therefore, submitted an application before this Court and, as directed by this Court, the aforesaid question of law has been referred by the Tribunal to this Court for its opinion.

2. The learned counsel for the parties conceded that the answer to the question referred to us is covered by the decision of Division Bench of this "Court in CIT v. Fakirchand Dayaram [MCC No. 356 of 1976 decided on 7-2-1980]. Section 275 which provides for a period of limitation for imposing a penalty, was amended with effect from 1-4-1971. In Fakirchand's case (supra), it was held that if in a particular proceeding the period of limitation was still running on 1-4-1971, the amended provision enlarging the period of limitation would apply. In view of that decision, our answer to the question referred to us is in the negative and against the assessee. The reference is answered accordingly. In the circumstances of the case, parties shall bear their own costs of this reference.