

(1979) 10 MP CK 0001

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 281 of 1976

Addl. Commissioner of Income
Tax

APPELLANT

Vs

Brijmohan Jaiswal

RESPONDENT

Date of Decision: Oct. 11, 1979

Acts Referred:

- Income Tax Act, 1961 - Section 148, 256(1), 271(1)(c)

Citation: (1980) 3 TAXMAN 285

Hon'ble Judges: R.K. Vijayvargiya, J

Bench: Single Bench

Advocate: S.C. Gagadiya, for the Appellant; C.M. Mehta and S.C. Goyal, for the Respondent

Judgement

R.K. Vijayvargiya, J.

By this reference u/s 256(1) of the income tax Act, 1961 (hereinafter referred to as "the Act"), the income tax Appellate Tribunal, Indore Bench, Indore has referred the following question of law for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that for the purpose of levy of penalty u/s 271(1)(c) of the income tax Act, 1961, the quantum of penalty is to be worked out in accordance with the law which was prevailing in the year of assessment and that the amendment with effect from April 1, 1968, will not have retrospective operation for any of the three years under reference?

The material facts giving rise to this reference as set out in the statement of the case are as follows:

The assessee is an individual and the assessment years involved are 1963-64, 1964-65 and 1965-66. The original assessment in respect of the aforesaid years were

completed by the ITO. Subsequently, the ITO reopened the assessment for these years and notices u/s 148 of the Act were given to the assessee. In response to the said notices, the assessee filed returns for the said three years disclosing the income on which he was initially assessed by the ITO. The ITO, however, completed the reassessments by making a total addition of Rs. 19,400 in the three assessment years as per details given below:

| Assessment year | Income returned in response to notice u/s 148 | Income assessed | Addition made |
|-----------------|---|-----------------|---------------|
| 1963-64 | 12,635 | 16,640 | 4,000 |
| 1964-65 | 13,554 | 21,250 | 7,700 |
| 1965-66 | 14,824 | 22,520 | 7,700 |
| Total: | | | 19,400 |

The addition made by the ITO, in respect of each of the three years, was confirmed by the AAC and also by the Tribunal.

After completing the reassessment the ITO initiated penalty proceedings and as the minimum penalty imposable under the Act exceeded Rs. 1,000, he referred each of the three cases to the IAC who, after taking into consideration the plea of the assessee, came to the conclusion that the assessee was guilty of concealment and/or of furnishing inaccurate particulars of his income. He, therefore, imposed upon the assessee a penalty, for each of the three years, as follows:

| Assessment year | Amount |
|-----------------|-----------|
| 1963-64 | Rs. 4,200 |
| 1964-65 | Rs. 8,000 |
| 1965-66 | Rs. 8,000 |

2. The assessee preferred appeals to the Tribunal against the order of the IAC imposing penalties. The Tribunal held on facts that the assessee furnished inaccurate particulars of the income and, therefore, he was clearly guilty of the default u/s 271(1)(c) of the Act and the penalty was clearly attracted. As regards the quantum of penalty the Tribunal held that as the returns at the original stage were filed before April 1, 1968, and as the default was to be attributed only to these returns the amendment to section 271(1)(c) of the Act, which came into effect from April 1, 1968, will not be applicable as that amendment will not have any

retrospective operation. In this view of the matter, the Tribunal reduced the quantum of penalty to 30% of the tax sought to be avoided in respect of each of the three years under appeal before it. On these facts, at the instance of the Revenue, the Tribunal has referred the aforesaid question of law for the opinion of this court.

3. It is not disputed that returns in response to the notices u/s 148 of the Act were filed by the assessee after April, 1, 1968, i.e., on April 20, 1968, for all the three assessment years. The penalty proceedings were initiated for the concealment of income in the returns filed by the assessee on April 20, 1968. It also cannot be disputed that penalty is imposed on account of a wrongful act committed by the assessee. It is well settled that penalty is imposable in accordance with the law in force on the date on which the wrongful act was committed. In the present case, the penalty was imposed on account of concealment of particulars of income by the assessee. The particulars of income were concealed by the assessee, in the returns filed in response to the notices u/s 148 of the Act, which has given rise to the penalty proceedings. In the circumstances, the law which was in force on April 20, 1968, when the returns were filed by the assessee in response to the notices u/s 148 of the Act will govern the penalty proceedings. After examining the scheme of the Act, on similar facts, in M.C.C. No. 290 of 1976 ([Additional Commissioner of Income Tax Vs. Balwant Singh Sulakhanmal](#), we have held that if the concealment of income is attributable to the return filed in response to the notice u/s 148 of the Act after April 1, 1968, the penalty proceedings would be governed by section 271(1)(c) of the Act as amended by the Finance Act, 1968, notwithstanding that the said return related to an assessment year prior to April 1, 1968, or that the assessee had initially filed a return in which also the income was concealed.

4. The learned counsel for the assessee relied upon the decisions in [Commissioner of Income Tax Vs. Gopal Krishna Singhania](#), [Commissioner of Income Tax Vs. Ram Achal Ram Sewak](#), [Addl. Commissioner of Income Tax Vs. Onkar Saran](#), and [Commissioner of Income Tax Vs. A. Rahman](#), and submitted that the concealment of income in the return filed by the assessee in response to a notice u/s 148 of the Act will relate back to the assessment year for which the return was filed and that the view taken by us requires reconsideration. We have given our anxious consideration to the decisions relied upon by the learned counsel for the assessee and with respect we are unable to agree with the view taken in the decisions referred to above. The learned counsel for the assessee was unable to bring to our notice any provision of law for holding that even though penalty proceedings are initiated in connection with the return filed in response to a notice u/s 148 of the Act, the default will be attributable to the return filed in the original assessment proceedings or that the said default will relate back to the assessment year for which the return was filed. In the present case, as the wrongful act of concealing the income was committed on April 20, 1968, the IAC was fully justified in imposing the penalty under the provisions of section 271(1)(c) of the Act, as amended by the Finance Act of 1968, and the Tribunal erred in law in holding that on the facts and in the

circumstances of the case the imposing of penalty under the amended section 271(1)(c) of the Act would be giving retrospective effect to it. As a result of the discussion aforesaid, our answer to the question referred to us is in the negative and against the assessee. We also make it clear that in the present case no retrospective operation was given by the IAC to the provisions of the amended section 271(1)(c) of the Act. In the circumstances of the case, we direct the parties to bear their own costs of this reference.