

(1987) 08 MP CK 0030

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 14 of 1983

Commissioner of
Income Tax

APPELLANT

Vs

Dr. Manoranjan
Mohanty

RESPONDENT

Date of Decision: Aug. 12, 1987

Acts Referred:

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

Citation: (1988) 67 CTR 104 : (1989) ILR (MP) 315 : (1988) 171 ITR 95 : (1987) 35 TAXMAN 366

Hon'ble Judges: N.D. Ojha, C.J; K.K. Adhikari, J

Bench: Division Bench

Advocate: B.K. Rawat, for the Appellant; H.S. Shrivastava, for the Respondent

Judgement

N.D. Ojha, C.J.

The Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur, has referred the following questions to this court for its opinion u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as " the Act ") :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was, in law, right in holding that the penalty order dated January 30, 1979, made by the Inspecting Assistant Commissioner u/s 271(1)(c) of the Act was bad in law ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the penalty order passed by the Inspecting Assistant Commissioner u/s 271(1)(c) of the Income Tax Act, 1961, on January 30, 1979, was bad in law as having been made after six years of the order of remand ?"

2. The facts in a nutshell, necessary for answering the aforesaid questions, may be stated as under : An order of assessment was passed against the assessee on

August 12, 1969. Subsequently, on August 9, 1971, an order imposing penalty on the assessee was passed by the Inspecting Assistant Commissioner. An appeal was preferred by the assessee against this order which was allowed by the Income Tax Appellate Tribunal on November 18, 1972, and the matter was remanded to the Inspecting Assistant Commissioner for being decided afresh. In pursuance of the order of remand, the Inspecting Assistant Commissioner passed a fresh order on January 30, 1979, imposing penalty on the assessee. An appeal was again preferred against this order by the assessee before the Tribunal which was allowed on October 16, 1980, and the order imposing penalty was quashed. The Commissioner of Income Tax thereupon made an application for referring question No. (i) stated above. This application was numbered as R. A. No. 43 (JAB) of 1980. A miscellaneous application was filed by the assessee before the Tribunal asserting that apart from the point on which the appeal had been allowed by the Tribunal, another plea had been raised to the effect that the order of the Inspecting Assistant Commissioner dated January 30, 1979, imposing penalty was bad in law inasmuch as it had been passed after an inordinate delay of more than six years of the passing of the order of remand dated November 18, 1972, but the same had not been considered by the Tribunal in its appellate order. This plea found favour with the Tribunal and holding that even though the point had been raised but had not been decided, the Tribunal decided this point also in favour of the assessee whereupon on another application, being R.A. No. 4 (JAB) of 1982 made on behalf of the Commissioner of Income Tax, the second question stated above was referred by the Tribunal. It may, however, be pointed out that while referring both these questions, the Tribunal has drawn up a common statement of case and referred these questions by the same order.

3. As regards question No. (i), it may be pointed out that it has not been disputed before us that against the order of assessment passed on August 12, 1969, no appeal had been preferred by the assessee. In this view of the matter, it is apparent that it was a case which would be governed by Clause (b) of Section 275 of the Act. On a plain reading of Clauses (a) and (b) of Section 275, it appears that Clause (a) applies to those cases where the relevant order of assessment is the subject-matter of an appeal. In any other case, namely, where the order of assessment is not the subject-matter of an appeal, it is Clause (b) which is applicable. According to Clause (b) of Section 275 of the Act, the limitation for passing an order imposing penalty was two years, which was to be computed from the end of the financial year in which proceedings in the course of which action for imposition of penalty had been initiated, were completed. Since the order of assessment was passed on August 12, 1969, and the initial order imposing penalty by the Inspecting Assistant Commissioner was passed on August 9, 1971, it was apparently passed within the limitation of two years prescribed by Clause (b) of Section 275 of the Act. The view taken by the Tribunal, however, was that since the subsequent order dated January 30, 1979, imposing penalty was passed by the Inspecting Assistant Commissioner after about six years of the order of remand dated November 18, 1972, passed by

the Tribunal, it was bad in law inasmuch as the order of penalty could, at best, have been passed within two years of the order of remand. In our opinion, the Tribunal has apparently committed an error of law in taking this view.

4. In [Vasani and Co. Vs. Commissioner of Income Tax, Gujarat-III](#) , a question came up for consideration in regard to the scope of an order of penalty to be passed u/s 275 of the Act. It was held that on a plain reading of this provision, it was obvious that the term "no order imposing a penalty under Chapter XXI shall be passed" would refer prima facie to the initial order or the first order which would have to be passed by the competent authority and the two years" period was never intended to set up a limit for final completion, of all proceedings.

5. In [COMMISSIONER OF Income Tax, BIHAR AND ORISSA Vs. RUPSA RICE MILL.](#) , a similar question came up for consideration before the Orissa High Court u/s 28(1)(c) of the Indian Income Tax Act, 1922. In that case, the assessment proceedings were completed on October 31, 1950. Thereupon notice u/s 28(1)(c) of the 1922 Act was issued to show cause why penalty should not be levied for concealment of income. A fresh notice was again issued to him on April 1, 1955, and the matter was posted for hearing on April 13, 1955, It was again adjourned to April 25, 1955, on which date the Income Tax Officer merely directed that orders will be passed on receipt of the records. Nothing was done for nearly two years and on January 28, 1957, the officer fixed the case for hearing on September 11, 1957, and after obtaining the explanation from the assessee, levied penalty on January 11, 1958. It may have to be further noted that the assessee did not file any appeal against the order of assessment dated October 31, 1950, which became, therefore, final long before the penalty proceedings were disposed of. The Tribunal, in the proceedings for imposition of penalty, held that there was unconscionable delay in passing the order of penalty and, relying on some observations in [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#) , took the view that there being no special circumstances for the considerable delay which had taken place in completing the order of penalty, the penalty order was bad in law. The learned judges of the Orissa High Court pointed out that the Tribunal had misconstrued the judgment in the case of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#) . It was pointed out that in the case of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#) , the penalty order had been quashed not on the only ground of delay, but also on a further finding that had been recorded on merits, to the following effect (p. 331 of 54 ITR):

" I am not satisfied that in this case the Income Tax department proved it beyond doubt that a default had necessarily been committed by the petitioner in regard to the filing of a return. For these reasons, I am of the view that the impugned order of penalty is bad and must be set aside."

6. It was thereafter held (p. 331 of 54 ITR):

" It is well-settled that a rule of limitation must be expressly provided in a statute and cannot be inferred merely on account of unreasonable delay. Once it is conceded that in the Indian Income Tax Act, 1922 (which provides for special rules of limitation for the various proceedings under that Act), there is no express provision prescribing the period within which an order of penalty should be passed, no such order can be held to be bad in law merely because of the inordinate delay. Mr. D. Mohanty for the Department rightly invited my attention to an earlier decision of the Lahore High Court in (1938) 6 ITR 616 , where the learned judge held on a construction of Section 28 of the Act that no period of limitation can be even impliedly inferred from the other provisions contained in that section.

But as the Tribunal is the final appellate authority over orders passed by the Income Tax Officer, it had undoubtedly jurisdiction to set aside the order of penalty, if, after taking all the facts and circumstances of the case into consideration, it was of the view that the penalty should not have been imposed. The question is mainly one of propriety and not of law, and, as the final court of appeal, the Tribunal could exercise all the powers which the original taxing authority had. But this reference was necessitated because the order of penalty was set aside solely on the ground that it was bad in law, and for the reasons already given above this view of the Tribunal was based on a misconception."

7. In [Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay](#) , while dealing with the scope of the revisional powers u/s 22 of the Bombay Sales Tax Act, 1946, and Section 31 of the Bombay Sales Tax Act, 1953, it was held by the Supreme Court that since there was no period of limitation prescribed for exercise of revisional powers under these sections, no such limitation had necessarily to be read into the two Acts. Considerable reliance, we may point out, was placed by learned counsel for the assessee on the decision of the Allahabad High Court in the case of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#) . As already seen above, that case has been distinguished by the Orissa High Court in the case of [COMMISSIONER OF Income Tax, BIHAR AND ORISSA Vs. RUPSA RICE MILL.](#), and we agree, with respect, with the distinction pointed out therein.

8. In this connection, it may further be pointed out that the case of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#) came up for consideration before a Division Bench of the same High Court in [Ram Kishan Baldeo Prasad Vs. The Commissioner of Income Tax](#) . After referring to the observations, made in the case of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#) , it was held by the Division Bench as under (p. 494):

" If the learned single judge intended to lay down that inordinate delay in every case, as a matter of law, would lead to the invalidity of the penalty order, then we cannot, with respect, subscribe to it. When there is no prescribed period of limitation, as already observed, delay can only be a factor, albeit a very relevant

factor, to be taken into consideration in determining the propriety of the order."

9. In that case, the question which was referred was as to whether for the assessment year 1945-46, the assessment for which was made in March, 1950, penalty could be imposed in August, 1957. The question was answered by saying that a penalty in respect of the assessment year 1945-46, as a matter of strict law, could have been imposed in August, 1957, even though assessment was completed in March, 1950, but propriety required the changed circumstances to be taken into consideration and the responsibility for the inordinate delay to be fastened before levying the penalty and upholding it.

10. The Tribunal has placed reliance on [Bisheshwar Lal Vs. Income Tax, Officer](#), , another Division Bench decision of the Allahabad High Court. In our opinion, the facts of that case are distinguishable. Indeed, that case seems to approve the law laid down by the Orissa High Court in the case of [COMMISSIONER OF Income Tax, BIHAR AND ORISSA Vs. RUPSA RICE MILL.](#), . [Bisheshwar Lal Vs. Income Tax, Officer](#), was one where the writ petition had been filed challenging the pending proceedings for levying penalty and those proceedings were quashed on the ground that on account of inordinate delay, it would be vexatious to the assessee if the proceedings were allowed to continue. Reliance in that case was placed on behalf of the Department on the case of [COMMISSIONER OF Income Tax, BIHAR AND ORISSA Vs. RUPSA RICE MILL.](#), . After referring to the law laid down in that case, it was pointed out as under (p. 700):

" An order imposing penalty had been passed by the Income Tax Officer. The question before the High Court was whether that order was bad in law. It was held by the High Court that the order imposing penalty could not be said to be bad in law merely on the ground of delay. In the present case, we are not dealing with any order imposing penalty. The question before us is whether the pending proceedings u/s 28(1)(c) of the Act should be allowed to proceed or not. "

11. It is in view of these observations that we are of the opinion that the law laid down by the Orissa High Court in [COMMISSIONER OF Income Tax, BIHAR AND ORISSA Vs. RUPSA RICE MILL.](#), , in so far as the cases where an order of penalty had already been passed are concerned, was approved in the case of Bisheshwar Lal [1970] 75 ITR 6. At any rate, no dissent was expressed in that case.

12. The case of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#), came up for consideration again in a subsequent case before the Allahabad High Court in [Commissioner of Income Tax Vs. Ajodhya Prasad Gopi Nath](#), . The observations which had been made by the Division Bench of that court in the case of [Ram Kishan Baldeo Prasad Vs. The Commissioner of Income Tax](#), in regard to the decision in the case of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#), were approved. In the case of [Commissioner of Income Tax Vs. Ajodhya Prasad Gopi Nath](#), also, an order imposing penalty had been cancelled by the

Tribunal on the ground that the order had been passed after inordinate delay. The question referred to the High Court in that case was as to whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in cancelling the levy of penalty under the provisions of Section 28(1)(c) of the Indian Income Tax Act, 1922, relating to the assessment years 1952-53 and 1953-54, respectively. It was held as under (P. 954) :

" In the present case, the Tribunal which was the final court of fact did not apply its mind to the rival contentions of the parties and did not fix the responsibility for the delay. There is no finding as to whether the delay was innocuous or it affects the levy of penalty because of any changed circumstances. In this view of the matter, we would answer the question referred to us by saying that the Appellate Tribunal was not justified in cancelling the levy of penalty without recording relevant findings and fixing responsibility for the delay and finding its effect upon the penalty order. "

13. The matter came up for consideration before the Bombay High Court also in [Lalta Prasad Goenka Vs. Commissioner of Income Tax, Central, Bombay](#), . That case took into consideration the three decisions mentioned above in the cases of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#), , [COMMISSIONER OF Income Tax, BIHAR AND ORISSA Vs. RUPSA RICE MILL.](#), and [Ram Kishan Baldeo Prasad Vs. The Commissioner of Income Tax](#), . The question referred to the Bombay High Court in that case was whether, on the facts and in the circumstances of the case, any penalty was leviable against the assessee u/s 28(1)(b) of the Indian Income Tax Act, 1922. The plea which had been raised before the Tribunal on behalf of the assessee relying on the case of [MOHD. ATIQ Vs. Income Tax OFFICER, DISTRICT II \(V\), KANPUR.](#), , was that the proceedings for penalty must be held to be barred by time. The question was answered in the affirmative and in favour of the Revenue.

14. According to the view taken in [Vasani and Co. Vs. Commissioner of Income Tax, Gujarat-III](#), , it is apparent that the limitation of two years would not apply when an order of penalty is to be passed consequent upon an order of imposition of penalty being set aside and the matter being remanded for fresh decision. Reliance has been placed by learned counsel for the assessee also on the case of [S.B. Gurbaksh Singh Vs. Union of India \(UOI\) and Others](#), , where it was held by the Supreme Court that even if no limitation is prescribed, the rule of reasonable time will apply and that what is reasonable time will depend upon the facts of each case. The rule in this behalf is well-settled. However, the said decision cannot be taken to be an authority for the proposition that an order imposing penalty would become bad in law simply on the ground of delay in passing the said order when no period of limitation is prescribed therefor.

15. Reliance was also placed by learned counsel for the assessee on a decision of the Kerala High Court in [KRISHNA BHATTA Vs. AGRL. Income Tax OFFICER AND OTHERS.](#), . That was a case where penalty had been imposed u/s 41(1) of the Kerala Agricultural Income Tax Act, 1950, after a gap of 16 years. A finding was recorded in

that case that prima facie the delay was unreasonable if there was no explanation at all for the same.

16. Coming to the facts in the instant case, it may be seen that the Tribunal has not applied its mind at all as to whether the delay was innocuous or had been caused without any sufficient cause. The Tribunal has also not gone into the question as to whether it was proper or not to sustain the order of penalty on account of any changed circumstances that may have come into being during the intervening period. It is, therefore, not possible to say in the instant case that the order imposing penalty was necessarily bad simply because it was delayed.

17. In view of the foregoing discussion, our answer to question No. (i) stated above is that, on the facts and in the circumstances of the case, the Tribunal was, in law, not right in holding that the penalty order dated January 30, 1979, made by the Inspecting Assistant Commissioner u/s 271(1)(c) of the Act was bad in law. Our answer to question No. (ii) is that, on the facts and in the circumstances of the case, the Tribunal was not correct in law in holding that the penalty order passed by the Inspecting Assistant Commissioner u/s 271(1)(c) of the Act, on January 30, 1979, was bad in law as having been made after an inordinate delay of six years of the order of remand without recording relevant findings and fixing responsibility for the delay and finding its effect upon the penalty order. In the circumstances of the case, there shall be no order as to costs.