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**(2000) 07 DEL CK 0138**

**Delhi High Court**

**Case No:** Income-tax Reference No. 129 of 1982

Commissioner of Income Tax

APPELLANT

Vs

D.K. Nawlakha

RESPONDENT

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**Date of Decision:** July 14, 2000

**Acts Referred:**

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

**Citation:** (2001) 165 CTR 582 : (2000) 246 ITR 557 : (2001) 114 TAXMAN 767

**Hon'ble Judges:** Dr. Arijit Pasayat, C.J; Surinder Kumar Aggarwal, J

**Bench:** Division Bench

**Advocate:** R.D. Jolly and Prem Lata Bansal, for the Appellant; None, for the Respondent

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### **Judgement**

Arijit Pasayat, C.J.

Pursuant to the directions given by this court u/s 256(2) of the Income Tax Act, 1961 (in short "the Act"), the following question has been referred for the opinion of this court by the Income Tax Appellate Tribunal, Delhi Bench-C (in short, "the Tribunal") :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the penalty order passed by the Inspecting Assistant Commissioner on March 14, 1978, holding that the Inspecting Assistant Commissioner had no jurisdiction to impose the said penalty u/s 271(1)(c) after the deletion of Section 274(2) of the Income Tax Act with effect from April 1, 1976 ?"

2. The factual position is almost undisputed. So far as relevant for adjudication it is as follows :

For the assessment year 1973-74 before completion of the assessment, the Assessing Officer, vide assessment order dated March 30, 1976, initiated proceedings u/s 271(1)(c) of the Act on the ground that the assessed had concealed or furnished inaccurate particulars of his income. Since the minimum penalty livable exceeded Rs. 25,000, the Assessing Officer referred the matter to the Inspecting

Assistant Commissioner (hereafter referred to as "the IAC"), who after giving an opportunity to the assessed and considering the submissions urged on his behalf held that penalty was livable and imposed a penalty of Rs. 72,960. The order of the Inspecting Assistant Commissioner was passed on March 14, 1978. At this juncture, we may note that by the Taxation Laws (Amendment) Act, 1975, Sub-section (2) of Section 274 was deleted from April 1, 1976.

3. Section 274 as it stood as on April 1, 1971, and after the deletion of Sub-section (2) is as under :

As on April 1, 1971:

"(1) No order imposing a penalty under this Chapter shall be made unless the assessed has been heard, or has been given a reasonable opportunity of being heard.

(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.

(3) An Appellate Assistant Commissioner, on making" an order under this Chapter imposing a penalty, shall forthwith send a copy of the same to the Income Tax Officer."

As on April 1, 1976 :

"(1) No order imposing a penalty under this Chapter shall be made unless the assessed has been heard, or has been given a reasonable opportunity of being heard . . .

(3) An Appellate Assistant Commissioner, on making an order under this Chapter imposing a penalty, shall forthwith send a copy of the same to the Income Tax Officer."

4. Learned counsel for the Revenue characterised the deletion as a change of forum and to be procedural and assailed the order of the Tribunal. There is no appearance on behalf of the assessed in spite of service of notice.

5. It is true that no litigant has any vested right in the matter of procedural law. But where the question is one of the change of forum, it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when proceedings are initiated in the Tribunal or court of first instance and unless the Legislature has, by express words or by necessary implication, clearly so

indicated that vested right will continue in spite of change of jurisdiction of the different Tribunals or forums (see [Hoosein Kasam Dada \(India\) Ltd. Vs. The State of Madhya Pradesh and Others, ; State of Bombay Vs. Supreme General Films Exchange Ltd., ; Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur,](#) and [Ramesh Singh and another Vs. Cinta Devi and others,](#) ).

6. The question of jurisdiction vis-a-vis the Income Tax Officer was considered elaborately by the apex court in [Commissioner of Income Tax, Orissa Vs. Dhadi Sahu,](#) and in [Varkey Chacko Vs. Commissioner of Income Tax,](#) . As was observed by the apex court in [Varkey Chacko Vs. Commissioner of Income Tax,](#) , the penalty for concealment of particulars of income or for furnishing inaccurate particulars of income can be imposed only when the assessing authority is satisfied that there has been such concealment or furnishing of inaccurate particulars. Penalty proceedings Therefore can be initiated only after the assessment order has been made which finds such concealment or furnishing of inaccurate particulars which authority has the jurisdiction to impose penalty is what is relevant. In both [Commissioner of Income Tax, Orissa Vs. Dhadi Sahu,](#) and [Varkey Chacko Vs. Commissioner of Income Tax,](#) , the apex court considered the effect of amendment introduced by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971. The position from that date has been indicated supra. Before amendment it read as follows :

"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 minimum penalty imposable exceeds a sum of rupees one thousand, 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."

7. It was observed that what was material was the date on which the references were initiated. When the Income Tax Officer referred the matter to the Inspecting Assistant Commissioner in the case at hand, Sub-section (2) of Section 274 had already been deleted and, Therefore, it was only the Income Tax Officer who had the authority to impose penalty. The question referred Therefore has to be answered in the affirmative, i.e., in favor of the assessee.