

(1991) 04 BOM CK 0100

Bombay High Court

Case No: IT Ref. No. 153 of 1977

Commissioner of
Income Tax

APPELLANT

Vs

R.N. Khanna

RESPONDENT

Date of Decision: April 30, 1991

Acts Referred:

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

Hon'ble Judges: T.D. Sugla, J; B.N. Srikrishna, J

Bench: Division Bench

Advocate: G.S. Jetly, for the Appellant; K.B. Bhujle, for the Respondent

Judgement

T.D. Sugla, J.

In this Departmental reference relating to the assessee's assessment for the years 1960-61, 1961-62 and 1962-63, the Tribunal has referred to this Court the following question of law for opinion under s. 256(1) of the IT Act :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the minimum penalty leviable under s. 271(1)(c) of the IT Act, 1961, for the asst. yrs. 1960-61, 1961-62 and 1962-63 is 20% of the tax sought to be evaded, that is to say, 20% of the difference between the tax on the income finally assessed and the tax on the income originally declared for the three years ?"

2. In order to appreciate the controversy involved it is desirable to mention that returns for the three years under reference were originally filed on 25th November, 1960, 27th December, 1960 and 6th February, 1962 respectively. However, returns in response to notices subsequently issued under s. 148 were filed sometime after the provisions of s. 271(1)(c) were amended whereby the limit of penalty was increased. Since, the penalty was imposed under s. 271(1)(c) in all the three years in pursuance of and after the assessments were made, the question arose whether the minimum imposable penalty should be as per the law that obtained when the returns were

originally filed or in accordance with the law that obtained when the returns in response to notice under s. 148 were filed. The counsel are agreed that such an issue and come up before our Court in the case of [Chowgule and Co \(Hind\) Private Ltd. Vs. Commissioner of Income Tax,](#) wherein it was held that penalty under s. 271(1)(c) in such cases was impossible in accordance with the law obtaining on the dates returns were filed originally. Following our High Court's judgment we answer the question referred to us in the affirmative and in favour of the assessee.

3. No order as to costs.