

(1979) 12 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 291 of 1976

Additional Commissioner of Income Tax

APPELLANT

Vs

Gopaldas Amarnomal

RESPONDENT

Date of Decision : 04-12-1979

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1985) 151 ITR 114

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Judgement

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 (hereinafter referred to as "the Tribunal"), 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 holding that since the default is attributable to the return of income filed in the course of the original assessment proceedings, pertaining to the assessment year 1965-66, the amended provisions of Section 271(1)(c) with effect from April 1, 1968, are not applicable and in accordingly cancelling the penalty levied u/s 271(1)(c) of the income tax Act ?"

2. The facts giving rise to this reference as set out in the statement of case are as follows: The assessee is an individual. The assessee filed his return of income for the assessment year 1965-66, earlier than the date of completion of the assessment which was on September 21, 1965. In the original return, the assessee disclosed a total income of Rs. 8,200. The ITO reopened the assessment of the assessee and issued notice to him u/s 148 of the Act. In response to the said notice, the assessee filed a return on September 18, 1969, declaring the same income of Rs. 8,200 as was originally returned by him. The ITO assessed the income at Rs. 21,807, which was eventually reduced by the Tribunal by Rs. 4,286. The ITO initiated proceedings u/s 271(1)(c) of the Act and

referred the same to the IAC. The IAC found the assessee guilty of concealing the income and imposed upon him a penalty of Rs. 5,000 under the provisions of the amended Section 271(1)(c) of the Act, which came into force on April 1, 1968. The assessee preferred an appeal against the order of the IAC before the Tribunal. The Tribunal confirmed the finding of the IAC about the concealment of income by the assessee but held that the default of the assessee would be attributable to the return of income filed by him at the original assessment stage and not to the return of income filed on September 18, 1969. The Tribunal, therefore, held that the penalty was imposable under the provisions of Section 271(1)(c) of the Act before its amendment and directed minimum penalty to be levied in accordance with law with reference to the tax sought to be avoided for the assessment year in question. At the instance of the Commissioner, the Tribunal has referred the aforesaid question of law for the opinion of this court.

3. It may be stated at the outset that the ITO initiated penalty proceedings for concealment of income in the second return filed by the assessee on September 18, 1969 pursuant to a notice issued by the ITO to the assessee u/s 148 of the Act. The IAC in his order has specifically stated that the penalty was imposable with reference to the return of income filed by the assessee on September 18, 1969, that is to say, after April 1, 1968, and, therefore, it has to be calculated under the provisions of Section 271(1)(c) of the Act as amended.

4. In *Additional Commissioner of Income Tax Vs. Balwant Singh Sulakhanmal*, , we have held that if penalty proceedings are initiated in connection with the return filed in response to a notice u/s 148 of the Act, the default would not be attributed to the return filed in the course of the original assessment proceedings. We have also held in that case that it is the law in force on the date on which the wrongful act is committed which would determine the penalty. This case was subsequently followed by us in *Additional Commissioner of Income Tax Vs. Ratanchand Sewakram*, . In the present case also, the penalty proceedings were initiated for concealment of income in the second return filed by the assessee which was after April 1, 1968. In the circumstances, in view of the aforesaid decisions, it has to be held that, in the circumstances of the case, the Tribunal was not justified in holding that the default was attributable to the return of income filed in the course of the original assessment proceedings and the amended provisions of Section 271(1)(c) of the Act were not applicable.

5. In view of the discussion aforesaid, our answer to the question referred to us is in the negative and against the assessee. In the circumstances of the case, the parties shall bear their own costs of this reference.