

(1991) 02 CAL CK 0060
In the Calcutta High Court
Case No : C.R. No. 5518 (W) of 1977

Amin Chand Payarelal

APPELLANT

Vs

Inspecting Assistant Commissioner and Others

RESPONDENT

Date of Decision : 08-02-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 271(1)

Citation : (1992) 194 ITR 511 : (1993) 66 TAXMAN 509

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : D. Pal and A. K. Roychowdhury, for the Appellant; R.C. Prasad, for the Respondent

Judgement

Susanta Chatterji, J.—The present rule was issued on October 11, 1977, at the instance of the writ petitioner, a registered partnership firm praying, inter alia, for an appropriate writ of mandamus commanding the respondents to withdraw and/or rescind the order dated September 26, 1974, passed by respondent No. 2, Commissioner of Income Tax, Central-I, in the penalty proceeding u/s 271(1)(c) of the Income Tax Act, 1961, and the imposition of penalty u/s 271(1)(c) and, consequently, the demand notice, u/s 156 and the penalty order dated October 7, 1974, for the assessment years 1959-60 to 1965-66 passed by respondent No. 4, Inspecting Assistant Commissioner of Income Tax, Range-V (Central), and the order dated October 3, 1977, passed by respondent No. 1, Inspecting Assistant Commissioner of Income Tax, Range-I (Central), and all subsequent proceedings thereto and thereunder on the ground that the Income Tax Officer not having been satisfied in the course of assessment proceedings that the petitioner has concealed the particulars of income or furnished inaccurate particulars of such income initiated the proceeding. The initiation of proceedings for imposition of penalty is without and/or in excess of jurisdiction and respondent No. 4 has no competence, authority and/or jurisdiction to exercise his power of imposition of penalty u/s 271(1) of the Act read with

Section 274 of the Act.

2. Learned counsel appearing for the petitioner has argued that the provisions u/s 271(1)(c) of the Act, read with Section 274(2) of the Act authorised the Inspecting Assistant Commissioner to impose penalty if prima facie the Income Tax Officer is satisfied u/s 271(1) of the new Act and that Sub-clause (c) the assessee has concealed the particulars of income or deliberately furnished inaccurate particulars of such income for the year in question. It is highlighted that, in the instant case, the assessment was completed by respondent No. 4 who was not the competent authority u/s 271(1) of the new Act to be satisfied regarding the concealment of particulars of income. It is alleged that the imposition of penalty under the new Act is illegal, invalid and without jurisdiction. According to the petitioner, there was no question of furnishing inaccurate particulars of income or not furnishing particulars of income and there is nothing on record to show that the Inspecting Assistant Commissioner was not satisfied in the course of proceeding that, in respect of any concealed income, the particulars have not been furnished and as such the penalty proceedings and the connected orders are illegal and without jurisdiction. It is placed on record that the "Commissioner of Income Tax, respondent No. 2, had no competence, authority and/or jurisdiction to direct the authority to impose penalty in the manner as indicated in the order dated September 26, 1974, and as such the proceedings and/or order passed by respondent No. 4 are illegal and in excess of jurisdiction.

3. The writ petition is opposed by the contesting respondents by filing a comprehensive affidavit. It is disclosed that the assessments for the assessment years 1959-60 to 1965-66 in the case of the petitioners were either set aside by the Appellate Assistant Commissioner or by the Income Tax Officer u/s 146 of the Act. The petitioner, however, filed the returns for the years 1959-60 to 1965-66 before the seizure of books by the C. B. I. After the books were returned by the C. B. I. in November, 1973, the petitioner filed revised returns. It is the contention of the petitioner that it voluntarily made disclosure of income in each of the aforesaid assessment years prior to the detection of the same by the Departments is not quite correct inasmuch as books of account by filing revised returns were seized by the C.B.I, in 1966-1968 (sic). In 1966-68, the C. B. I. and the Enforcement Department raided the petitioner's business premises and the regional offices and seized all available books of account and records relating to the Calcutta Branch of the petitioner firm and also its sister concerns. While the matter was under investigation by the Department, the petitioner approached the Department on March 2, 1964, through a petition for a reasonable settlement of its liability for the period 1959-60 to 1964-65. The petitioner made another petition on August 14, 1968, requesting for a settlement of liability for all the years beyond 1959-60 to 1968-69. While the petitions were under examination, the petitioner made another request to settle its liability for the assessment year 1959-60 to assessment year 1972-73 by a petition dated May 16, 1974, and, after making these petitions, the petitioner filed revised

returns for the assessment years 1959-60 to 1965-66 on July 30, 1974, as detailed in the affidavit-in-opposition. Upon scrutiny, it was detected that the petitioner furnished incorrect particulars and the totality of the circumstances clearly pointed that it was a case of gross and wilful neglect on the part of the petitioner who failed to prove that it was not a case of gross and wilful neglect in furnishing the original return. It is contended that the petitioner accepted levy of penalty for the assessment years 1959-60 to 1965-66 as it would be evident from the petitioner's letter dated October 5, 1974, addressed to the Inspecting Assistant Commissioner, Range-V (Central), Calcutta. It is placed on record that the steps taken by the respondents are not contrary to law due to the following aspects :

(a) I. A. C., Range-V (Central), Calcutta, was vested with jurisdiction u/s 125(1)(a) by the Commissioner of Income Tax (Central), Calcutta, vide his Order No. A-39066-CTC/I-O-2/71-72, dated January 11, 1974, and as such the I. A. C., Range-V (Central), Calcutta, had competent jurisdiction.

(b) In view of Sections 125(2)(a) and 125(1)(a), penal proceedings were correctly initiated by the I. A. C., Range-V (Central), Calcutta.

(c) The assessments for the assessment years 1959-60 to 1965-66 were all pending when the I. A. C., Range-V (Central), Calcutta, completed the assessments and initiated penalty proceedings u/s 271(1)(c) as he had competent jurisdiction u/s 125(2) of the Income Tax Act, 1961.

4. The petitioner also made an application u/s 154 of the Income Tax Act to the Inspecting Assistant Commissioner of Income Tax, Range-I (Central), Calcutta, and the said application was rejected holding, inter alia, that there was no mistake apparent on the face of the record which could be rectified under the aforesaid provision.

5. Upon perusal of the materials on record and considering the submission made on behalf of the respective parties, this court has scrutinized the impugned orders challenged before this court. The writ court being essentially concerned in examining the decision-making process does not find anything to interfere with by exercising its discretionary jurisdiction. Regard being had to the materials on record, the impugned orders are found to be justified and the petitioner cannot be permitted to move the writ court for interference.

6. Thus, finding no merit in the rule, the same is discharged. All interim orders are vacated. There will be no order as to costs.

7. Let there be stay of operation of the orders for a period of four weeks from date.