

(1977) 08 OHC CK 0021

In the Orissa High Court

Case No : Special Jurisdiction Case No. 150 of 1975

B.N. Sharma

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-08-1977

Acts Referred:

Income Tax Act, 1961 — Section 271(1), 274

Citation : (1977) 110 ITR 538

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : K.C. Lenka and P.K. Bhuyan, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.—On an application by the assessee u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), this court directed the Cuttack Bench of the Income Tax Appellate Tribunal to state a case and refer the following question for the opinion of the court :

" Whether the amount of penalty imposable should have been worked out on the basis of the law in force at the time the return was filed and the delinquency of excluding a part of the income had been committed ?"

2. The assessee is an individual. The relevant assessment year is 1965-66 corresponding to the previous Rama Navami year ending with April 9, 1965. The return for the year was filed on December 12, 1966, and assessment was completed on March 13, 1969, determining a total income of Rs. 81,470. The Income Tax Officer reopened the assessment by issue of a notice u/s 147 of the Act. The assessee filed a fresh return on April 6, 1971, but stuck to the figures returned originally. On 30th of August, 1971, reassessment was made by the Income Tax Officer and he "directed a proceeding u/s 271(1)(c) of the Act to be initiated.

3. The Inspecting Assistant Commissioner to whom the penalty matter was

referred u/s 274 of the Act rejected the explanation of the assessee and imposed a penalty of Rs. 13,500. It may be mentioned that the Income Tax Officer had in the order of reassessment included a sum of Rs. 42,000 as income from undisclosed sources and in the quantum appeal the Tribunal had upheld the addition of only Rs. 13,000 as cash credit.

4. The assessee appealed to the Tribunal against the levy of penalty and contended that penalty had been imposed without considering the real facts of the case and as a consequence of rejection of the assessee's explanation. It was further contended that penalty should have been levied with reference to the law which was in force at the time when the return was filed. This was on the basis that the quantum of penalty imposable had been enhanced by amendment of the Act with effect from April 1, 1968.

5. Prior to the amendment in 1968, Section 271(1)(iii) read thus :

(iii) in the cases referred to in Clause (c), in addition to any tax payable by him, a sum which" shall not be less than twenty per cent. but which shall not exceed one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income."

6. By the amendment, the following was substituted :

" (iii) in the cases referred to in Clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished."

7. Undoubtedly, the Amending Act has increased the quantum of imposable penalty. In this background, it has become necessary to determine as to whether the pre-amendment provision or the amended provision would apply to the instant case.

8. Counsel for the assessee contends relying on a decision of the Madras High Court in the case of Commissioner of Gift-tax Vs. C. Muthukumaraswamy Mudaliar, that the default having been committed prior to the amendment, i.e., when the return was made, the pre-amendment law must apply. On the other hand, learned standing counsel places reliance on a Bench decision of this court in the case of Commissioner of Income Tax Vs. K.C. Behera and Others, , where the court pointedly dealt with the law to be applied to a penalty proceeding with reference to the Explanation occurring in Section 271(1)(c) of the Act. Relying on the decision of the Constitution Bench of the Supreme Court in the case of Jain Bros. and Others Vs. The Union of India (UOI) and Others, , the court observed-- See Commissioner of Income Tax Vs. K.C. Behera and Others, :

"The aforesaid observations of their Lordships leave absolutely no room for doubt that the penalty proceeding is to be initiated only on the completion of the assessment when the assessing authority would have the satisfaction that the

assessee had concealed income which had escaped assessment."

9. The court, therefore, held that the existing law on the date of satisfaction of the Income Tax Officer would be the law to apply to the penalty proceeding. As we find, in the instant case the assessee made the second return on April 6, 1971, wherein there was the suppression. Assessment was completed on 30th of August, 1971, and it was at that point of time that penalty proceedings were ordered to be initiated. The ratio in Commissioner of Income Tax Vs. K.C. Behera and Others, , therefore, directly applies and the amended provision is applicable to the penalty proceeding.

10. Our answer, therefore, to the question is :

The amount of penalty imposable is to be worked out on the basis of the law in force on the date the Income Tax Officer directed initiation of the. proceeding u/s 271(1)(c) of the Act.

11. We make no order as to costs.

Panda, J.

12. I agree.