
(1970) 10 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 36 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Bipan Lal Kuthiala

RESPONDENT

Date of Decision : 19-10-1970

Acts Referred:

Income Tax Act, 1922 — Section 28(1), 28(3)

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

Citation : (1970) 10 P&H CK 0021

Hon'ble Judges : S.S. Sandhawalia, J; Prem Chand Pandit, J

Bench : Division Bench

Advocate : D.N. Awasthy, for the Appellant; M.M. Punchi, for the Respondent

Judgement

Sandhawalia, J.—The following two questions have been referred for the opinion of this court by the Income Tax Appellate Tribunal, Delhi Bench "B" :

"1. Whether, on the facts and circumstances of the case, the Tribunal was justified to hold that on a correct and true interpretation of Section 297(2)(k) of the Income Tax Act, 1961, the notice u/s 28(3) of the Income Tax Act, 1922, issued on August 6, 1959, cannot be deemed to have been issued under the corresponding provision of the 1961 Act ?

2. Whether, on the facts and in the circumstances of the case, the notice u/s 274(1), read with Section 271(1)(a) of the Income Tax Act, 1961, issued on April 27, 1963, constituted a valid commencement of proceedings within the meaning of Section 275 of the Act ?"

2. The assessee is a Hindu undivided family carrying on trade in timber in the States of Jammu and Kashmir and Himachal Pradesh. The relevant assessment year is 1958-59 and in connection therewith a notice dated May 10, 1958, u/s 22(2) of the Indian Income Tax Act, 1922, was duly served on the assessor. In accordance with this notice, the return was due to be filed on or before June 20, 1958. However, the assessee applied for and secured an extension of time till

October 31, 1958. No return was submitted before this date and the assessee applied again for extension but this was declined by the authorities. What is significant for the determination of the above-said questions, however, is that, on the 6th of August, 1959, the Income Tax Officer issued a notice u/s 28(3) of the Act of 1922, calling upon the assessee to show cause why penalty should not be imposed for non-compliance with the earlier notice u/s 22(2) of the Act. Subsequently, the return was in fact filed on the 30th of September, 1959, and the assessment was completed as late as the 28th of September, 1962, on a total income of Rs. 1,46,026.

3. It deserves notice that the Income Tax Act, 1961, had come into force on the 1st of April, 1962, and the assessment had been completed after that date. Again, on the 27th of April, 1963, another notice u/s 274 read with Section 271 of the new Act was duly issued and served on the assessee. In reply to the said notice the assessee raised several objections to the imposition of penalty, vide his explanation thereto dated the 18th of July, 1963. These objections were rejected by the Income Tax Officer on the ground that u/s 297(2)(g) of the Act of 1961, the proceedings may be initiated and penalty may be imposed under the new Act. He proceeded to impose a penalty of Rs. 12,709 being two per cent, of the tax payable for 10 months of delay in filing the return. On appeal, the Appellate Assistant Commissioner, Ambala Range, upheld the imposition of the penalty but reduced the amount thereof to Rs. 11,372. However, on further appeal, the contention of the assessee that the penalty notice had not been issued in the course of assessment proceedings and therefore penalty proceedings were not leviable under the new Act, found favour with the Tribunal. It was held that the notice under Sections 271/274 issued on the 27th of April, 1963, was long after the completion of assessment proceedings and there was consequently no valid commencement of penalty proceedings which were held to be unsustainable and hence the appeal was allowed: vide the Tribunal's order dated the 15th of November, 1966. The revenue then moved for and secured the present reference.

4. We advert to the first question referred to us by the Tribunal, Reliance on behalf of the revenue is placed on Section 297(2)(g) of the Income Tax Act of 1961 which is in the following terms :

" 297. (2) Notwithstanding the repeal of the Indian Income Tax Act, 1922 (hereinafter referred to as " the repealed Act").--

(g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act."

5. Relying on the above said provision, Mr. Awasthy rightly points out that in the present case the assessment was completed on the 28th September, 1962, that is after the crucial date of 1st April, 1962, and, therefore, the provision above-

said would be clearly applicable to the penalty proceedings against the assessee. It is argued that the provisions relating to the imposition of penalty in the new Act of 1961 and particularly sections 271, 274 and 275 have to be read in consonance with Section 297(2)(g) of the Act. This is conclusively so in view of the recent pronouncement of their Lordships of the Supreme Court in *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, wherein it has been laid down as follows:

" Both sections 271(1) and 297(2)(g) have to be read together and in harmony and so read the only conclusion possible is that for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962, or any earlier year which is completed after the first day of April, 1962, the proceedings have to be initiated and the penalty imposed in accordance with the provisions of Section 271 of the Act of 1961. Thus the assessee would be liable to a penalty as provided by Section 271(1) for the default mentioned in Section 28(1) of the Act of 1922 if his case falls within terms of Section 297(2)(g) "

6. In view of the above pronouncement and the admitted fact that the assessment year is prior to the 1st of April, 1962, and the assessment proceedings have been completed after that date, it is obvious that Section 297(2)(g) would be attracted and the penalty on the assessee would be levied under the new Act. In fact, this position cannot be and is not being seriously disputed on behalf of the respondents.

7. In view of the above accepted position the sole question that, therefore, arises for determination is whether the penalty proceedings in the present case were initiated in the course of the assessment proceedings or not. The revenue relies heavily and primarily upon the penalty notice issued on the 6th August, 1959, u/s 28(3) of the Act of 1922. It is argued that the terminus a quo for the starting of the penalty proceedings is the issuance of this notice, and the year 1959 obviously was well within the course of the assessment proceedings completed subsequently on the 28th September, 1962. The core of the question, therefore, is whether this notice u/s 28(3) of the Act of 1922 can be treated as one under the corresponding provisions of the new Act of 1961. This primarily requires the interpretation of Section 297(2)(k) which is set down below for facility of reference:

" 297. (2) Notwithstanding the repeal of the Indian Income Tax Act, 1922 (hereinafter referred to as " the repealed Act"),--

(k) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly."

8. Construing Section 297 as a whole it is evident that this first repealed the

earlier Income Tax Act of 1922 and by virtue of Sub-clause (2) introduced a large number of saving clauses; vide Sub-clauses (a) to (m) of the same. Such a saving clause or clauses are not unusual features of a statute which repeals earlier legislation on the point. Being a case of express repeal, Section 6 of the General Clauses Act, 1897, would well be attracted even if no specific saving clause had been indicated. That apart, the principle underlying the said provision and the manner of construing such provisions was well enunciated by their Lordships in *State of Orissa Vs. M.A. Tulloch and Co.*, in the following terms:

" It is manifest that the principle underlying it is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications express or implied in the later enactment designed to completely obliterate the earlier state of the law. "

9. In the Income Tax Act, 1961, there is nothing to indicate any such intent that Parliament designed to wholly obliterate the earlier state of law on the point. Adverting now to the specific language of Sub-clause (k) quoted above, it is evident that the same is couched in terms of the widest amplitude. For the purposes of this case it may be noticed that the language takes within its sweep any " direction ", " instruction ", "order", or " rule" which may have been issued under the Income Tax Act of 1922. This provision would, therefore, in our view, cover a notice issued u/s 28(3) of the old Act. It is obvious that such a notice is merely a ministerial act in pursuance of an order directing that an assessee may be heard or given a reasonable opportunity of being heard before the imposition of penalty u/s 28(1) thereof. The result, therefore, is that a notice issued u/s 28(3) of the old Act can legitimately be considered as a good and valid notice issued under the new Act for the purpose of invoking sections 271 and 274 thereof. Reliance in this context has rightly been placed on a Division Bench judgment of *INDRA and CO. Vs. UNION OF INDIA AND ANOTHER*, (Appendix 1) (Raj.). where specifically construing Section 297(2)(k), it is observed as follows by the Bench ;

" To our mind, this saving provision applies to the case and the legislature could not in all probability have intended that the notices already issued under the provisions of Section 22(1) of the old Act should be taken to be wiped out with the coming into force of the new Act. "

10. In fairness to Mr. Punchi, we must notice his contention that assuming that the language of Sub-section (k) covers a notice u/s 28(3) of the old Act, the same would not be applicable because the corresponding provisions of the new Act were not consistent with the same. Apart from advancing this argument, learned counsel was unable to sustain the same on any substantial basis. Even a cursory comparison of the provisions of the old and the new Act would show that far from there being any inconsistency in the penalty provisions of the two, there appears to be substantial identity of language. Section 28(1) and Sub-clauses

(a), (b) and (c), for instance, are in pari materia with its corresponding provision of Section 271 of the 1961 Act. Similarly, Section 28(3) of the old Act is almost in a language identical with Section 274(1) of the new Act.

11. Lastly, Mr. Punchi resorted faintly to the contention that a notice u/s 28(3) would not fall within the ambit of the words "direction ", " instruction ", " order " or " rule " used in Section 297(2)(k) above-said. We are unable to accede to this contention also because, in our view, the language used in the sub-section is of an amplitude which easily covers a notice issued prior to the imposition of penalty.

12. In the light of the foregoing discussion, the answer to question No. (1) is, therefore, in the negative and in favour of the revenue.

13. Mr. Awasthy, on behalf of the revenue, agrees that, in view of the proposed answer to question No. (1), the second question referred to us is redundant and does not arise. We, accordingly, decline to answer the same. There would be no order as to costs.

Prem Chand Pandit, J.

14. I agree.