(1978) 02 CAL CK 0007

In the Calcutta High Court

Case No : Income-tax Reference No. 179 of 1971

Commissioner of Income Tax APPELLANT

Vs

Champlal Jain RESPONDENT

Date of Decision : 01-02-1978

Acts Referred:
Income Tax Act, 1961 — Section 271(1)

Citation : (1978) 112 ITR 809

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : B.K. Bagchi and B.K. Naha, for the Appellant;None, for the Respondent

Judgement

Sabyasachi Mukharji, J.—The question involved in this case relates to penalty for the assessment year 1963-64. It appears that the assessee returned a total income of Rs. 11,084 for the said assessment year. The return was filed on the 15th September, 1964. The Income Tax Officer completed the assessment for the assessment year on an income of Rs. 1,33,192. As the total income returned by the assessee was less than 80 per cent, of the total income on which he was assessed, the Income Tax Officer initiated penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961. As the minimum penalty leviable was more than Rs. 1,000 he referred the case to the Inspecting Assistant Commissioner for taking further action in this matter. The Inspecting Assistant Commissioner issued notice u/s 274(2} of the Income Tax Act, 1961, to the assessee to show cause why penalty should not be imposed upon him for failure to disclose the correct particulars of his income in his return. In reply to the said show-cause notice, the assessee offered an explanation contending that the addition in the assessment was made merely on estimate and that he did not conceal any income and, therefore, no penalty should be imposed. The Inspecting Assistant Commissioner rejected the contention of the assessee and held that the income returned by the assessee was less than 80 per cent. of the total income on which he was assessed to tax by the Income Tax Officer and the onus lay upon him under the

Explanation to Section 271(1)(c) of the Income Tax Act, 1961, to prove that his failure to return his correct income did not arise from any fraud or gross or wilful neglect on his part and that as he failed to discharge that onus of proof he must be deemed to haVe concealed the particulars of his income. In that view of the matter, the Inspecting Assistant Commissioner levied upon the assessee the penalty of Rs. 10,000.

2. Against the assessment order, the assessee filed an appeal before the Appellate Assistant Commissioner disputing the addition made by the Income Tax Officer. The Appellate Assistant Commissioner reduced the assessed income of the assessee from Rs. 1,33,192 to Rs. 49,712. Against the order of the Appellate Assistant Commissioner, the assessee filed further appeal before the Tribunal. The Tribunal confirmed the order of the Appellate Assistant Commissioner and dismissed the assessee''s appeal.

3. Against the order of the Inspecting Assistant Commissioner levying a penalty of Rs. 10,000 u/s 271(1)(c) of the Income Tax Act, 1961, the assessee preferred an appeal before the Tribunal, Before the Tribunal it was contended on behalf of the revenue that since the return of income was filed by the assessee on the 15th September, 1964, the penalty proceedings were governed by the Explanation u/s 271(1)(c) of the Income Tax Act, 1961, which was introduced on 1st April, 1964. The Tribunal held that the said Explanation which was added with effect from 1st April, 1964, had no application to the assessment for the assessment year 1963-64. In these circumstances, the Tribunal allowed the assessee''s appeal and cancelled the penalty. Upon that the following question has been referred to this court, as directed u/s 256(2) of the Income Tax Act, 1961.

"Whether, on the facts, that the return of income for 1963-64 having been filed only on 15th September, 1964, the penalty proceedings would be governed by the Explanation to Section 271(1) of the Income Tax Act, 1961, which was introduced with effect from 1st April, 1964, the Tribunal was justified in law to hold that the said Explanation will have no application to the case for imposing any penalty u/s 271(1) of the Income Tax Act, 1961 ?"

4. So, the question with which we are concerned in this reference is whether in respect of the imposition of penalty for the assessment year 1963-64, the Explanation to Sub-section (1) of Section 271 of the Income Tax Act, 1961, would be applicable. The said Explanation to Sub-section (1) of Section 271 of the Act runs as follows:

"Explanation.--Where the total income returned by any person is less than eighty per cent, of the total income (hereinafter in this Explanation referred to as the correct income) as assessed u/s 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished particulars of such income for the purposes of Clause (c) of this Sub-section."

5. As noted above, the said Explanation was added with effect from 1st April, 1964. The return was filed, as mentioned hereinbefore again, on the 15th September, 1964, that is to say, after the introduction of the said Explanation to the said Act. Therefore, after the said Explanation has been added, the assessee returned the income and committed the offence mentioned in the Explanation. It seems to us that the position in law is that in the case of an offence of this nature the law applicable would be as on the date when the act which made the offence is committed. This is the view which has been taken by the Division Bench of the Allahabad High Court in the case of Commissioner of Income Tax Vs. Data Ram Satpal, . We are in respectful agreement with this view of the Division Bench of the Allahabad High Court. The same view has been reiterated by the Allahabad High Court in the case of Commissioner of Income Tax Vs. S. Devendra Singh, and in the case of Addl. Commissioner of Income Tax Vs. Jiwan Lal Shah, . As the offence was committed after the Explanation had come into effect, we are of the opinion that the penalty proceedings, in the instant case, would be governed by the Explanation mentioned in the section.

6. In the aforesaid view of the matter, we would answer the question by saying that the penalty proceedings would be governed by the Explanation to Section 271(1) of the Income Tax Act, 1961, and the Tribunal was not justified in holding that the Explanation would not govern the proceedings.

7. There will, however, be no order as to costs.

Guha, J.

8. I agree.

