
(1982) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 307 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Jai Narayan Jaiswal

RESPONDENT

Date of Decision : 21-10-1982

Acts Referred:

Income Tax Act, 1961 — Section 256, 256(2), 271(1), 275

Citation : (1983) 35 CTR 326 : (1984) 148 ITR 299 : (1983) 15 TAXMAN 348

Hon'ble Judges : G.L. Oza, J;B.C. Varma, J

Bench : Division Bench

Judgement

Oza, J.—This is an application submitted by the petitioner, the Commissioner, for a direction to the Tribunal to make a reference to this court for answering questions:

"1. Whether, on the facts and in the circumstances of the case, and in view of the provisions contained in Section 271(1)(c) of the I.T. Act, 1961, the Tribunal was right in law in cancelling the penalty of Rs. 50,000 levied by the IAC of I.T. u/s 271(1)(c) ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in not remanding the case back to the IAC as the time-limit to impose penalty u/s 271(1)(c) had already expired ? "

2. Facts necessary for the disposal of this application are that non-applicant assessee carried on business in liquor contracts. For the assessment year 1972-73 for which the account period ended on March 31, 1972, the non-applicant filed a return in the status of individual showing income of Rs. 14,247. It is further alleged that the non-applicant did not maintain any books of account of the business. He had based his income on the copy of the register obtained from District Excise Authorities. The non-applicant had taken licence for six liquor shops during the accounting year for a sum of Rs. 3,64,895.

3. The ITO required the non-applicant to show the source of investment in the

liquor contract. The non-applicant stated that an amount of Rs. 1,30,000 was taken on loan from different parties. In the month of December, 1971, a further loan of Rs. 50,000 was also taken from six more parties. Affidavits with regard to this were also filed.

4. The ITO, after considering various facts, held that the loan of Rs. 50,000 taken during the month of December, 1971, from six persons cannot be accepted as genuine and, consequently, added the same. He estimated the profit in the business at Rs. 1,18,187 and added the amount of Rs. 50,000. He thus estimated the total income of the non-applicant at Rs. 1,68,187. Against this, an appeal was preferred before the AAC and the Asst. Commissioner by his order dated September 10, 1975, confirmed the addition of Rs. 50,000 made by the ITO. An appeal was preferred to the Tribunal and the Tribunal also confirmed the decision of the AAC.

5. The ITO was satisfied that the non-applicant had concealed his income and referred the case to the IAC for purposes of penalty. The IAC, after considering the whole material before him, gave a finding that the non-applicant had concealed the particulars of his income and had furnished inaccurate particulars in respect of a sum of Rs. 50,000. He, therefore, imposed a penalty of Rs. 50,000 on the non-applicant by his order dated April 3, 1978.

6. Against this order of imposing penalty, an appeal was preferred before the Appellate Tribunal. The Tribunal held that no adequate opportunity was given to the non-applicant before penalty was imposed against him and, therefore, set aside the order imposing the penalty. It was suggested before the Tribunal that the matter be sent back to the IAC for giving adequate opportunity to the non-applicant but this request was negatived by the Tribunal on the ground that the imposition of penalty now after giving adequate opportunity would be barred by limitation u/s 275 of the I.T. Act. The Tribunal, therefore, allowed the appeal and set aside the order of the IAC imposing penalty against the non-applicant.

7. The Department filed an application before the Tribunal for making a reference on the two questions stated above but the prayer was rejected by the Tribunal and, hence, the present application.

8. Learned counsel for the Department contended that the Tribunal did not consider all the necessary materials which were before the IAC for coming to the conclusion that no adequate opportunity was afforded to the non-applicant and, therefore, the Tribunal was not justified in setting aside the penalty imposed by the IAC. Whereas the learned counsel for the non-applicant assessee contended that the facts as emerged were considered by the Tribunal and arrived at a finding of fact that the assessee-non-applicant did not have adequate opportunity and, therefore, the first question on which a reference is sought is admittedly a question of fact. It could not be disputed that whether the opportunity granted to the non-applicant was sufficient or not in the light of the language of Section 271(1)(c) before an order imposing penalty is passed will be

a question of fact. It could only be decided on the basis of the material as it appeared on record to the Tribunal and the Tribunal having come to the conclusion, it could not be said that any question of law arises.

9. As regards the second question, the Tribunal took the view that if the matter is remanded, as normally the matter had to be remanded for affording adequate opportunity to the assessee-non-applicant, but the Tribunal felt the difficulty because of Section 275 and felt that now the proceedings for imposing penalty could go beyond the time prescribed under s, 275. The learned counsel for the Department placed before us decisions in *Vasani and Co. Vs. Commissioner of Income Tax, Gujarat-III*, , *Seth Keshrichand Khaitan Education and Welfare Trust Vs. Commissioner of Income Tax*, and *Commissioner of Income Tax Vs. Saligram Premnath*, , to contend that the limitation provided in Section 275 will only be applicable in the case of starting of original proceedings before the authority for imposition of penalty but this provision will not be attracted in the case of remand, as is clear from the language of Section 275 and, in this context, contended that even if any other view is possible still it could not be disputed that it is a question of law that arises for which the Tribunal should be directed to refer the matter to this court. The learned counsel for the assessee-non-applicant contended that although a different view is possible on the language of Section 275, yet could not contend that a question of law does not arise. It is, therefore, apparent as to whether such proceedings for imposition of penalty if received by the IAC from the Tribunal, the limitation provided in Section 275 would be applicable or not is apparently a question of law and for that the Tribunal was not justified in rejecting the application.

10. It is, therefore, directed that so far as the first question is concerned, it is a question of fact for which no reference is called for. But so far as the second question, viz.:

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in not remanding the case back to the IAC as the time-limit to impose penalty u/s 271(1)(c) had already expired ? "

is concerned, it is a question of law and the Appellate Tribunal is, therefore, directed to make a reference for answering this question. In the circumstances, parties are directed to bear their own costs.