
(1983) 07 PAT CK 0010
In the Patna High Court
Case No : Tax Case No. 81 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Jammuna Prasad Sah

RESPONDENT

Date of Decision : 19-07-1983

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1984) 38 CTR 129 : (1985) 152 ITR 226 : (1983) 15 TAXMAN 555

Hon'ble Judges : S.K. Jha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Judgement

1. This is a reference u/s 256(1) of the I.T. Act, 1961 (hereinafter to be referred to as "the Act"), by the Income Tax Appellate Tribunal, Patna Bench "B", Patna, for opinion on the following question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the quantum of penalty should have been calculated on the basis of the provisions of the Act in force prior to April 1, 1968 ? "

2. The case relates to the assessment year 1966-67. The assessee is a HUF and derives income from truck plying, cloth business and commission from Government as its grain stockist. The ITO in the course of the assessment proceedings found that the assessee had received commission from the Government as grain stockist amounting to Rs. 16,604 which was brought to tax by the ITO and the same was confirmed by the AAC in appeal. After the assessment was over, the matter was referred to the IAC for purposes of levy of penalty as the amount of penalty leviable exceeded Rs. 1,000. The IAC issued a show-cause notice to the assessee in regard to which certain submissions were made with which he did not agree. For the reasons mentioned in his order dated December 1, 1971, a copy of which is marked annexure "A" to the statement of the case, penalty of Rs. 5,256 was levied u/s 271(1)(c) read with Section 274(2) of the Act.

3. The assessee filed an appeal to the Tribunal and submitted that a sum of Rs. 11,349 was endorsed by the assessee to a District Magistrate and the same was deposited in the Government account towards satisfaction of the shortages that had occurred from time to time. It was only Rs. 5,255 which was actually received by the assessee under this head. An affidavit has been filed in support of the same. The assessee had also to incur some expenses for earning the aforesaid commission which fact should also have been taken into account in making the addition.

4. The Revenue, on the other hand, submitted that the case fell within the four corners of the Explanation clause to Section 271(1)(c) as the income returned was less than 80% of the income assessed and the difference was also attributable to the assessee's gross or wilful neglect. It was also stated that the quantum of penalty as levied was correct as the return was filed after April 1, 1968. On appeal, the Tribunal was of the opinion that the authorities below were right in levying the penalty, after the insertion of the Explanation to Clause (c) of Section 271(1). It, however, held that the quantum of penalty was excessive. The Tribunal accepted the submission of the assessee's representative that the quantum of penalty, in the instant case, should be calculated on the basis of the provisions of the Act in force prior to April 1, 1968, and not the amended law in force thereafter.

5. On the facts and in the circumstances mentioned above, it is clear that the Tribunal has erred in law in applying the law in force prior to April 1, 1968. It is well established by now that the Explanation to Section 271(1)(c) governed all such cases in which returns are filed after that date. Without multiplying the decisions, we merely refer, in passing, to three decisions, one of the Supreme Court and two of this court, namely, *Brij Mohan Vs. Commissioner of Income Tax*, New Delhi, (*Commissioner of Income Tax Vs. Lalji Ram Bhagat*,) decided by this very Bench on December 17, 1982, and *Tax Case No. 59 of 1974* (*Commissioner of Income Tax Vs. Monghyr Gun Manufacturing Co-operative Society Ltd.*,) decided on March 16, 1983.

6. We are, therefore, of the opinion that the question referred must be answered in the negative and, accordingly, we hold that the Tribunal was not correct in law in holding that the quantum of penalty should have been calculated on the basis of the provisions of the Act in force prior to April 1, 1968. Mr. Rameshwar Prasad, learned counsel for the assessee, urged a point that the Tribunal ought to have given a relief with regard to the expenditure incurred by the assessee in earning the revenue. That, however, is not the subject-matter of a reference and we refrain from going into that question.

7. The case is, accordingly, decided in favour of the Revenue and against the assessee. On the facts and in the circumstances of the case, there shall be no order as to costs.