

(1979) 11 DEL CK 0041

In the Delhi High Court

Case No : Income-tax Reference No. 48 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Kalyan Singh

RESPONDENT

Date of Decision : 22-11-1979

Acts Referred:

Citation : (1982) 133 ITR 465

Hon'ble Judges : S. Ranganathan, J; D.R. Khanna, J

Bench : Division Bench

Advocate : M.L. Verma and S. Mukherjee, for the Appellant; C.S. Aggarwal and Meera bhatia Jaggi, for the Respondent

Judgement

Ranganathan, J.—This is a reference at the instance of the Commissioner of Income Tax u/s 256(1) of the I.T. Act, 1961. The reference arises out of the proceedings for the levy of a penalty u/s 271(1)(a) of the I.T. Act, 1961, for the assessment years 1960-61 and 1961-62, in the case of Kalyan Singh of Delhi.

2. For the assessment year 1960-61, the assessed was served with a notice u/s 22(2) of the Indian I.T. Act, 1922. The return of income in compliance with the notice should have been filed on or before November 11, 1960. But it was actually filed only on December 21, 1962, i. e., after a delay of 25 months.

3. For the assessment year 1961-62, the return in response to the notice u/s 22(2) was due to be filed on or before April 20, 1962. It was however, filed only on December 29, 1962, i. e., after a delay of 8 months.

4. The assessments for both the years were completed by the ITO on March 30, 1963, u/s 143(3) of the I.T. Act, 1961. The ITO was also of opinion that the delay in the filing of the returns was not due to reasonable cause. He, Therefore, issued notices to the assessed and after considering and rejecting the Explanation given by the assessed for the delay in the filing of the returns, imposed penalties of Rs. 11,318 and Rs. 2,842, respectively, for the two assessment years. It is common ground that these penalties have been levied at

the rates prescribed by Section 271(1)(a) of the Act, 1961, i.e., they have been calculated at 2% of the tax payable by the assessed for these years.

5. The assessed filed appeals before the AAC against the penalty orders but these were unsuccessful. Thereafter, the assessed filed appeals to the Appellate Tribunal. Before the Appellate Tribunal it was contended for the assessed that the returns filed by it had been filed in the forms prescribed under the repealed Act but since the return had been filed after the coming into force of the Act of 1961, they should be considered as invalid in the eye of law. This contention was rejected by the Tribunal. The Tribunal also rejected the assessed's other contentions that there was reasonable cause for the failure to furnish the returns within the time allowed. The Tribunal, however, observed :

"We, Therefore, hold that there was no reasonable cause for the delay in the filing of the returns and that the levy of penalties is justified in these cases. But in regard to quantum, we have no doubt that the penalties imposed are highly excessive. Rs. 22,637 and Rs. 17,764 are, respectively, the amounts due by way of tax on the assessed income for the assessment years 1960-61 and 1961-62. The assessed had already paid advance tax, u/s 184, of Rs. 7,125 and Rs. 1,803, respectively. This has also not been taken into account before levy of the penalties. Keeping all these facts in view, we consider that the ends of justice would be met by the imposition of penalties of Rs. 2,500 and Rs. 1,000, respectively, for the assessment years 1960-61 and 1961-62. The excess amount of penalties, if already collected, shall be refunded to the assessed."

6. The Tribunal granted the above reduction because it was of the opinion, which has been expressed in para. 5 of the order, that in respect of defaults as committed by the applicant in this case the quantum should be determined with reference to the Act of 1922.

7. At the request of the Commissioner, the following three questions have been referred to us for our decision :

"1. Whether, on the facts and in the circumstances of the case, the reduction of penalties levied u/s 271(1)(a) of the Income Tax Act, 1961, from Rs. 11,318 and Rs. 2,842 to Rs. 2,500 and Rs. 1,000, respectively, for the assessment years 1960-61 and 1961-62 was legal and valid ?

2. Whether the Tribunal is legally justified in retaining any penalty u/s 271(1)(a) of the Income Tax Act, 1961, for the defaults committed u/s 28(1) of the Indian Income Tax Act, 1922 ?

3. Whether any penalty could be imposed u/s 271(1)(a) of the Income Tax Act, 1961, when the returns of income were filed on December 29, 1962, in the forms prescribed under the Indian Income Tax Act, 1922?"

8. Mr. M. L. Verma, learned counsel for the Commissioner, submitted that all the three questions have to be answered in favor of the revenue as the questions at issue are concluded by the decision of the Supreme Court in the case of Jain

Bros. and Others Vs. The Union of India (UOI) and Others, and of the decision of this court in the case of Commissioner of Income Tax, Delhi Vs. Maya Rani Punj, . In fact, Mr. C. S. Aggarwal, learned counsel appearing for the assessed, is not in a position to deny that after these two decisions, the imposition of a penalty u/s 271(1)(a) of the Act and at the rates prescribed by that section was perfectly justified and that the Tribunal was not justified in reducing the penalty below the limits prescribed by Section 271(1)(a).

9. The learned counsel for the respondent however, sought to support the assessed's case on a slightly different ground. He raised the contention that in the present case the notices having been issued u/s 22(2) before April 1, 1962, the [assessments should have been completed by the ITO u/s 23(3) of the Indian I.T. Act, 1922. According to him, the assessments completed u/s 143(3) were invalid. The learned counsel contends that it is open to him to urge that the penalty orders are invalid because the assessments on the basis of which the penalties are sought to be levied are thus invalid. There are several formidable objections in the way of the counsel for the respondent. In the first place, this is a point which the learned counsel did not take before the Appellate Tribunal or any of the lower authorities. The contention that had been raised before the Appellate Tribunal was that the return filed was invalid ; the logical consequence, sought to be established, was that since no valid returns have been filed by the assessed at all, there could be no computation of the penalty in terms of Section 271(1)(a). The point that is now sought to be made out was not raised by the assessed. and was also not discussed by the Tribunal. The learned counsel is also not correct in trying to say that this is only an aspect [of the validity of the penalty order which was challenged by the assessed before the Tribunal and which is covered by the questions referred to us. That is totally a new ground of challenge to the penalty order and it is also not covered by the questions which have been framed for our decision. That apart, there are also certain other difficulties which we may indicate, though we have not finally decided the same, since we are not permitting the learned counsel to raise those objections. It is well established that an order does not become invalid merely because it gives a reference to a wrong provision of law [See L. Hazari Mal Kuthiala Vs. The Income Tax Officer, Special Circle, Ambala Cantt.,]. It would, Therefore, appear that merely because the assessment order was, in the present case, described as an order u/s 143(3) instead of Section 23(3) it would not be an invalid order. Further, as we pointed out to the learned counsel for the assessed, his case appears to fall both under Clauses (b) and (c) of Section 297(2) and Clause (b) certainly permitted the assessment to be made under the provisions of the new Act. Thus, even on merits, the contention that the assessment itself was invalid would not appear to be correct. But, as already stated, we are not deciding this question and we are merely indicating our prima facie opinion.

10. The next contention of Mr. C. S. Aggarwal was that though a penalty was imposable u/s 271(1)(a) of the Act, the Tribunal was justified in reducing the quantum of the penalty because at least a part of the period of default fell during

the period prior to April 1, 1962. This contention of the learned counsel can have any validity, if at all, only in relation to the assessment year 1960-61, because so far as the assessment year 1961-62 is concerned, the entire period of default taken into account for penalty, namely, April 20, 1962, to December 29, 1962, is subsequent to the commencement of the new Act. But we are afraid that even in respect of the earlier assessment years the contention of the learned counsel cannot be accepted. In *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, , the Supreme Court had clearly laid down that an assessed 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 the terms of Section 297(2)(g). That being so, the provisions of Section 271(1)(a) clearly apply. We are unable to see any logic or the principle by which the learned counsel for the assessed tries to take away from the scope of an order u/s 271(1)(a) that part of the provisions which relates to the computation of the quantum of penalty. In fact, as mentioned earlier, this is an aspect of the matter which is already covered by the decision of this court in the case of *Commissioner of Income Tax, Delhi Vs. Maya Rani Punj*, . Mr. C. S. Aggarwal made a reference to certain cases which had been decided under the W.T. Act in which the computation of the penalties by reference to the periods of default during which different provisions were in force, has been approved. It is unnecessary to consider these cases as, in our opinion, they stand on a different footing altogether. Those were cases in which different sets of provisions were applicable at different periods of time, and the court had to consider how far these provisions were to be reconciled and how these provisions had to be applied where the period of default extended over periods covered by the various provisions. But in the present case after the decision of the Supreme Court in *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, , there is no dispute that it is only Section 271(1)(a) that has to apply, and not Section 28(1)(a). This being so, the question of applying differential rates for the periods of default prior to April 1, 1962, does not at all arise.

11. Finally, Shri C. S. Aggarwal drew our attention to para. 6 of the Tribunal's order where the Tribunal has given as one of the reasons for reducing the penalty, the fact that the assessed had paid advance tax for both the years. The contention of the learned counsel is that the amount of advance tax paid by the assessed has to be deducted and only the balance is to be taken into account as the tax payable with reference to which the amount of penalty could be computed. We are not called upon to express any opinion on this contention. The Tribunal has not expressed any opinion about it, except that it has generally taken it into account. The question is not referred to us as to whether the amount of advance tax is deductible for the purpose of computation of penalty. We, Therefore, give no opinion on this contention and it will be open to the learned counsel to take up the contention before the Appellate Tribunal, if it is otherwise permissible in law, when the matter goes to the Tribunal for disposal conformable to the judgment of this court.

12. For the reasons above mentioned, we answer the first question in the negative by saying that the Tribunal was not justified in reducing the penalties. The second question is answered in the affirmative by saying that the Tribunal was justified in retaining the penalty u/s 271(1)(a) of the I.T. Act, 1961, but that it should have retained the penalty in the manner provided in Section 271(1)(a). The third question is also answered in the affirmative and against the assessed. As the assessed has failed, he will pay the costs of this reference.