
(1987) 06 KL CK 0029

In the High Court Of Kerala

Case No : O.P. No's. 6352, 6353, 6354 and 6510 of 1984

Commissioner of Income Tax

APPELLANT

Vs

M. Sreedharan

RESPONDENT

Date of Decision : 12-06-1987

Acts Referred:

Income Tax Act, 1961 — Section 129, 256(2), 271(1), 274

Citation : (1987) 06 KL CK 0029

Hon'ble Judges : K.S. Paripoornan, J;K. Sreedharan, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; P.G.K. Warriyar, for the Respondent

Judgement

K.S. Paripoornan, J.—The Revenue is the petitioner in these four original petitions. The same assessee is the respondent in all the four cases. The respondent is an assessee to Income Tax. The matter relates to the assessment years 1973-74 to 1975-76. The question is regarding the validity of penalty proceedings initiated against the respondent for the years 1973-74, 1974-75 and 1975-76 u/s 271(1)(c) read with Section 274 of the Income Tax Act. For the assessment year 1975-76, proceedings u/s 271(1)(a) were also initiated. In response to the notices issued proposing the levy of penalty for the above three years, the respondent-assessee submitted written explanations against levy of penalty u/s 271(1)(c) of the Act. Regarding the assessment year 1975-76, in proceedings u/s 271(1)(a) of the Act, the respondent-assessee requested for a month's time to submit his explanation. It does not appear that he filed his explanation thereafter. Subsequent to the issue of notices, there was a change in the personnel or incumbent. The successor Income Tax Officer, without issuing any further notices to the assessee or an intimation of the change, levied penalties for all the three years. He also levied penalty u/s 271(1)(a) for the assessment year 1975-76. In the appeals, the Appellate Assistant Commissioner held that the proceedings imposing the penalties are null and void since the Income Tax Officer had not given the assessee an opportunity of being heard

before imposing the penalty. He relied on the decision of the Calcutta High Court in COMMISSIONER OF Income Tax, WEST BENGAL-IV Vs. SMT. CHITRA MUKHERJEE., .

2. The Appellate Tribunal in ITA Nos. 428 to 431 (Cochin) of 1981 by its order dated July 7, 1983, affirmed the orders passed by the Appellate Assistant Commissioner. It was held that the Appellate Assistant Commissioner was justified in cancelling the penalty following the decision of the Calcutta High Court aforesaid. The Revenue filed petitions u/s 256(1) of the Income Tax Act praying that certain questions of law arising out of the appellate order of the Tribunal dated July 7, 1983, may be referred for the decision of this court. The Income Tax Appellate Tribunal by a common order dated November 21, 1983, rejected the petitions. Thereafter, the Revenue has filed these four original petitions u/s 256(2) of the Income Tax Act praying that the three questions of law formulated in paragraph 12 of the petition may be directed to be referred by the Appellate Tribunal for the decision of this court.

3. We heard counsel for the Revenue, Sri N. R. K. Nair and also counsel for the assessee, Mr. Warriyar. The real scope of Section 129 of the Income Tax Act read with Sections 271 and 274 of the Act arises for consideration in these cases. It was brought to our notice that the decisions in Shop Siddegowda and Family Vs. Commissioner of Income Tax, Mysore, , A. C. METAL WORKS Vs. COMMISSIONER OF Income Tax, DELHI AND RAJASTHAN., , MURLIDHAR TEJPAL Vs. COMMISSIONER OF Income Tax, PATNA., , Hulekar and Sons Vs. Commissioner of Income Tax, Mysore, , Kanailal Gatani v. CIT [1963] 48 ITR 262 and Pradip Lamp Works v. CIT [1977] Tax LR 760 (Cal) supports the view of the Revenue that where one Income Tax Officer issues notice calling upon the assessee to show cause why penalty should not be levied and the assessee submits his explanation in writing, but does not choose to appear or ask for a personal hearing or fails to demand a rehearing u/s 129 of the Act, the successor-in-office has authority to continue the penalty proceedings and impose the penalty on the assessee after considering the written representations of the assessee and without giving a fresh opportunity of being heard. Counsel for the Revenue submitted that the aforesaid decisions of the Mysore, Rajasthan, Patna and Calcutta High Courts have laid down the law correctly. It was further submitted that the decisions of the Andhra Pradesh and Calcutta High Courts in Anantha Naganna Chetty Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, and COMMISSIONER OF Income Tax, WEST BENGAL-IV Vs. SMT. CHITRA MUKHERJEE., are distinguishable. The crucial fact in this case is that the assessee filed objections to the initiation of penalty proceedings. He did not ask for a personal hearing. He did not demand a rehearing also. In these circumstances, the decision of the Appellate Tribunal is erroneous in law. Counsel for the assessee laid stress on the decisions of the Andhra Pradesh High Court in Anantha Naganna Chetty Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, as also the decision of the Calcutta High Court in COMMISSIONER OF Income Tax, WEST BENGAL-IV Vs. SMT. CHITRA MUKHERJEE., and submitted

that the Appellate Assistant Commissioner as well as the Appellate Tribunal were justified in holding that the levy of penalty in the instant case is illegal and unauthorised.

4. Having heard the rival contentions of the parties, we are of the view that questions Nos. 1 and 3 formulated in paragraph 12 of the original petition are questions of law which do arise out of the common order of the Appellate Tribunal in ITA Nos. 428 to 431 (Cochin) of 1981 dated July 7, 1983. Accordingly, we direct the Income Tax Appellate Tribunal, Cochin Bench, to refer questions Nos. 1 and 3 specified in paragraph 12 of the original petition for the decision of this court along with the statement of the case. The said questions are extracted herein-below:

"1. Whether, on the facts and in the circumstances of the case, and on an interpretation of Section 129 of the Income Tax Act, the Tribunal is right in interfering with the penalty order by confirming the order of the Appellate Assistant Commissioner ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee cannot be deemed to have declined to avail of the opportunity by demanding to have a rehearing or reopening of the case, nor could he be deemed to have waived it ?"

5. A copy of this judgment under the seal of this court and the signature of the Registrar will be sent to the Income Tax Appellate Tribunal, Cochin Bench, forthwith.