(1987) 05 PAT CK 0009

In the Patna High Court

COMMISSIONER OF Income Tax APPELLANT

Vs

MOHAN LAL AGRAWALA. RESPONDENT

Date of Decision : 13-05-1987

Acts Referred:
Income Tax Act, 1961 — Section 148, 256, 260, 271

Citation : (1987) 167 ITR 825

Hon'ble Judges : Uday Sinha, J;B. N. Agrawal, J

Bench : Full Bench

Judgement

B. N. AGRAWAL J. - In these reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), relating to the assessment years 1966-67 and 1967-68, the Income Tax Appellate Tribunal, "A" Bench, Patna, has referred the following question of law to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that penalties u/s 271(1)(c) were to be levied for the assessment years 1966-67 and 1967-68 at the rates effective prior to April 1, 1968 ?"

The assessee filed original return on August 8, 1967, showing his total income at Rs. 13,668 relating to the assessment year 1966-67 and the assessment was completed on August 11, 1967. Later on, the Department issued notice u/s 148 of the Act on receipt whereof the assessee filed return on December 4, 1970, showing the total income at Rs. 26,728.

For the assessment year 1967-68, the assessee filed original return on March 1, 1968, showing the total income at Rs. 13,286 and the assessment was completed on May 30, 1968. Later on, pursuant to the notice received by the assessee u/s 148 of the Act, he filed return on December 4, 1970, showing income at Rs. 32,628.

The Income Tax Officer reassessed the income of the assess for both the assessment years and initiated penalty proceedings and on completion thereof for the assessment year 1966-67, penalty was imposed at Rs. 13,060 and for the assessment year 1967-68, penalty was imposed at Rs. 19,343 in accordance with the law relating to the rate of penalty in force from April 1, 1968. The assessee, being aggrieved by the imposition of penalty, preferred two appeals before the Appellate Assistant Commissioner who reduced the penalty and held that the rate of penalty would be in accordance with the law as was in force prior to April 1, 1968. Thereafter, the Revenue took the matter in two separate appeals before the Tribunal which upheld the decision of the Appellate Assistant Commissioner. Hence, these reference to this court.

Mr. B. P. Rajgarhia, learned senior standing counsel appearing on behalf of the Revenue, contended that the question of law referred to this court is concluded by a Full Bench decision of this court in COMMISSIONER OF WEALTH-TAX Vs. DALIP KUMAR WORAH AND ANOTHER., (Taxation Case No. 269 of 1976 and analogous cases disposed of on April 27, 1987) in which their Lordships have followed the two decisions of the Supreme Court in Jain Bros. and Others Vs. The Union of India (UOI) and Others, and Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, . In the Full Bench case, their Lordship were dealing with the case u/s 18 of the Wealth-tax Act which is in pari material with section 271 of the Act and it has been laid down that the rate of penalty would be imposable in accordance with the law which was in force on the date of satisfaction of the Wealth-tax Officer, i.e. the date when the proceeding for levy of penalty was initiated. In both Supreme Court cases referred to above, their Lordships were considering the case of imposition of penalty u/s 271 of the Act and it was laid down that the penalty would be imposed in accordance with the law which was in force on the date when the proceedings for imposition of penalty were initiated. Thus, I find that the Income Tax Officer was justified in imposing penalty in accordance with the law which was in force from April 1, 1968, and the Appellate Assistant Commissioner and the Tribunal were not justified in holding that penalty would be levied in accordance with the law which was prevailing prior to April 1, 1968.

The question referred to this court in these two references in answered in the negative, i.e., in favour of the Revenue and against the assessee. The references are accordingly disposed of but there would be no order as to costs, in view of the fact that there has been no appearance on behalf of the assessee.

Let a copy of this judgement be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, "A" Bench, Patna, in terms of section 260 of the Act.

UDAY SINHA J. - I agree.

