
(1970) 08 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 4 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Munshi Ram Tilak Raj

RESPONDENT

Date of Decision : 25-08-1970

Acts Referred:

Income Tax Act, 1922 — Section 22, 22(1)

Income Tax Act, 1961 — Section 271, 271(1), 297(2)

Citation : (1970) 08 P&H CK 0024

Hon'ble Judges : S.S. Sandhawalia, J; Prem Chand Pandit, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.S. Gupta, for the Appellant; Nemo, for the Respondent

Judgement

Sandhawalia, J.—In connection with the assessment years 1960-61 and 1961-62 of the assessee-firm, Messrs. Munshi Ram Tilak Raj of Amritsar, the relevant notice u/s 22(1) of the Indian Income Tax Act, 1922, was published in April, 1960. This notice directed the filing of the returns by the assessee within 65 days of its publication. However, the returns for both the years were filed on the 18th of December, 1962. Admittedly, there was a delay of 30 months and 18 months, respectively, in filing these returns. Consequently, a notice u/s 274, read with Section 271(1)(a) was issued to the assessee directing him to show cause why penalty be not imposed for the late filing thereof. Written explanations were filed in respect of this delay on behalf of the assessee, but the Income Tax Officer did not accept the said explanations and, holding that the same was deliberate and wilful, imposed penalties to the tune of Rs. 3,612-89 and Rs. 2,827-19, respectively, by his orders dated the 27th June, 1963. It is evident, therefore, that the assessments for the two relevant years were completed after the first of April, 1962. The assessee. appealed and the Appellate Assistant Commissioner partially accepting the appeal directed that the delay in furnishing the returns committed before 1st April, 1962, be ignored on the ground of the violation of Articles 14 and 20(1) of the Constitution of India. Accordingly, the penalties

imposed were reduced to Rs. 1,150 and Rs. 1,165, respectively, by his consolidated order dated the 11th December, 1963. On appeal, the Income Tax Appellate Tribunal (Delhi Bench "B") held that the Appellate Assistant Commissioner had erred in holding that the penalty was not leviable for the portion of the delay committed up to the 1st of April, 1962, on the ground of the constitutional violation abovesaid. However, it proceeded to hold that the penalties leviable on the assessee should be determined with reference to the provisions of the Act of 1922 and not under the Act of 1961 and, consequently, held that the reduced penalties were reasonable and did not deserve interference. Two applications were then moved by the revenue praying that a statement of the case be drawn up for reference to the High Court and, accepting the same, the Tribunal has referred the following two questions for our opinion ;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the penalty leviable u/s 271(1)(a) of the Income Tax Act, 1961, should be determined with reference to the provisions of the Indian Income Tax Act, 1922 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the penalties of Rs. 1,150.00 and Rs. 1,165.00, which were less than the minimum prescribed by Section 271(1)(i) were reasonable?"

2. Mr. D. N. Awasthy on behalf of the revenue contends that the matter now stands covered by the decision of their Lordships in Jain Bros. and Others Vs. The Union of India (UOI) and Others, and also places reliance on a Division Bench judgment of this court in Commissioner of Income Tax v. Kirpa Ram Radha Kishan, See Appendix page 623 *infra*, (I.T.R. No. 11 of 1968, decided on 21st of April, 1970).

3. We do not have the advantage of hearing any argument in reply as the assessee has not put in an appearance in this court. However, it is undisputed in the present case that both the assessments are prior to the year ending the 31st day of March, 1962, and the assessments for both have been completed after the first day of April, 1962. In this context, therefore, we are of the view that the following observations of their Lordships in Jain Brothers case have a direct bearing :

"We are further unable to agree that the language of Section 271 does not warrant the taking of proceedings under that section when a default has been committed by failure to comply with a notice issued u/s 22(2) of the Act of 1922. It is true that Clause (a) of Sub-section (1) of Section 271 mentions the corresponding provisions of the Act of 1961, but that will not make the part relating to payment of penalty inapplicable once it is held that Section 297(2)(g) governs the case. Both Sections 271(1) and 297(2)(g) have to be read together and in harmony and so read the only conclusion possible is that for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962, or any earlier year which is completed after first day of April,

1962, the proceedings have to be initiated and the penalty imposed in accordance with the provisions of Section 271 of the Act of 1961. Thus, the assessee 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)."

4. The Division Bench case cited on behalf of the revenue also directly covers the points in issue.

5. In our view, therefore, the answer to both the questions referred for decision must be in the negative. There will be no order as to costs.

Prem Chand Pandit, J.

6. I agree.