**(1986) 09 AHC CK 0061**

**In the Allahabad High Court**

**Case No :** Income Tax Ref. No. 273 of 1979

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

NARAIN SINGH DAS. — RESPONDENT

**Date of Decision :** 04-09-1986

**Acts Referred:**
Income Tax Act, 1961 — Section 159, 271, 274

**Citation :** (1986) 57 CTR 290

**Hon'ble Judges :** N. D. Ojha, C.J

**Bench :** Division Bench

# Judgement

N. D. Ojha, C.J. - The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad had referred the following to this Court for its opinion by its order dt. 10-7-1979.

"Whether on the facts and in the circumstances of the case the Tribunal was correct in law in holding that the IAC had no jurisdiction to pass the order of penalty under s. 271(1)(c) of the Act on the date on which it was passed ?"

This reference has been numbered as IT Ref. No. 271 of 1979. An application has been made in behalf of the legal representatives of Narsing Das assessee opposite-party on 29-8-1985 stating that Narsingh Das died on 7-4-1981 and since no application had been made to substitute his legal representatives the reference stands abated. For the applicant CIT on the other hand it has been urged that in view of s. 159(3) of the IT Act, 1961 the legal representatives if the deceased shall, for the purposes of this Act be deemed to be the assessee. According to him in this view of the matter the legal representatives of the deceased assessee have themselves become assessee on the death of the assessee and there is no question of abatement. Emphasis was placed on the word, "deemed to be an assessee". For the legal representatives of the deceased assessee reliance on the other hand was placed on Chapter VIII, Rule 38A of the Rules of Court which inter alia provides that the provisions contained in Rules 1 to 6 and 9 of Order 22 of the CPC shall apply to Tax Acts References also. According to him in view of the said Rules it was necessary for the applicant to make an application to substitute the legal representatives of the deceased assessee and that not having been done the reference has abated. Counsel for the legal representatives of the deceased assessee also urged that even on merits there was no substance in the reference inasmuch as the question referred to for this Courts opinion has already been decided by a Division Bench of this Court in Commissioner of Income Tax Vs. Om Sons, .

2. Counsel for the department in this connection has submitted that some other High Courts have not agreed with the view taken by this Court in the case of M/s. Om Sons, Dehradun. He, however, candidly conceded that so far as this Court is concerned the decision in the case of M/s. Om Sons, Dehradun still holds goods and has indeed been followed thereafter in a number of other cases.

3. Having heard counsel for the parties we find no good ground to take a view contrary to that taken in the case of M/s. Om Sons (supra). Since the question referred to this Sons Court for its opinion already stands decided by the decision in the case of M/s. Om Sons (supra), we are of opinion that it is not necessary in the instance case to go into the question as to whether the reference has abated or not. Suffice it to say for the purposes of this reference that the legal representatives of the deceased assessee today are represented by their counsel and we have heard him before deciding the reference on merits.

4. In order to indicate that this case is covered by the decision in the case of M/s. Om Sons (supra) it is necessary to pint out that assessment in this case was made on 17-3-1975. Thereafter the ITO initiated penalty proceedings and referred the matter to the IAC under s. 274(2) of the Act for proper action and the IAC in his turn issued a show cause notice. The order of imposing penalty was passed on 22-11-1976 by the IAC. All this was done after the amendment of s. 274(2) of the IT Act with effect from 1-4-1971 by the Taxation Laws (Amendment) Act, 1976. The effect of this amendment was that the pass any order of the penalty.

5. In view of the foregoing discussion we answer the question referred to us in the affirmative, in favour of the assessee and against the department. There shall, however, be no order as to costs.