(1987) 08 RAJ CK 0025

In the Rajasthan High Court

Case No : Income Tax Reference No. 14 of 1981

Commissioner of Income Tax APPELLANT

Vs

New Beawar Traders RESPONDENT

Date of Decision : 20-08-1987

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 274

Citation : (1987) 66 CTR 192 : (1988) 171 ITR 167 : (1987) 34 TAXMAN 321

Hon'ble Judges : J.S. Verma, C.J;Milap Chand Jain, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Rajendra Singhvi and D.S. Shishodia, for the Respondent

Judgement

1. This reference u/s 271(1)(c) of the Act.

4. Consequently, the referenc of the Income Tax Act, 1961, at the instance of the Revenue was to answer the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the learned Inspecting Assistant Commissioner of Income Tax did not have the power after March 31, 1976, consequent to the deletion of Section 274(2) of the Income Tax Act, 1961, with effect from April 1, 1976, to levy penalty u/s 271(1)(c) of the Act even in a case in which the penalty proceedings had been initiated before April 1, 1976, and were pending with the Inspecting Assistant Commissioner on that date, and in cancelling the penalty of Rs. 5,000 levied on the assessee in this case ?"

2. The relevant assessment year is 1967-68. The assessee filed a return showing an income of Rs. 33,259 and the assessment was completed by the Income Tax Officer on a total income of Rs. 94,668 on March 30, 1972. The amount was reduced in appeal to Rs. 76,168. The Inspecting Assistant Commissioner gave notice to the assessee u/s 274(2) read with Section 271 of the Act on March 30, 1972, and ultimately by order dated September 15, 1977, the Inspecting

Assistant Commissioner imposed a penalty of Rs. 5,000 u/s 271(1)(c) of the Act.

3. The assessee contended that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty by order dated September 15, 1977, passed subsequent to April 1, 1976, when Sub-section (2) of Section 274 had been deleted. This contention of the assessee was accepted by the Tribunal. Hence, this reference at the instance of the Revenue.

4. Admittedly, the Inspecting Assistant Commissioner had commenced the penalty proceedings by issuing notice to the assessee u/s 274(2) read with Section 271 of the Act on March 30, 1972, i.e., much prior to the deletion of Sub-section (2) of Section 274 with effect from April 1, 1976. It has been held by us in Commissioner of Income Tax Vs. Kishan Lal Kanhya Lal, (D.B. Income Tax Reference No. 8 of 1981), decided today, and for the reasons given therein, the Inspecting Assistant Commissioner had jurisdiction to impose penalty in such matters where the Inspecting Assistant Commissioner was seized of the penalty proceedings prior to April 1, 1976. For the same reason, it has to be held that the Inspecting Assistant Commissioner had jurisdiction to impose penalty in the present case since he was already seized of the penalty proceedings prior to April 1, 1976.

5. Consequently, the reference is answered in favour of the Revenue and against the assessee by holding that the Tribunal was not justified in taking the view that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty after March 31, 1976, even in a case like the present one where the penalty proceedings were pending before the Inspecting Assistant Commissioner on that date. Since the Tribunal has not decided the appeal before it on merits, the appeal shall be decided afresh. No costs.