(1999) 07 DEL CK 0104

In the Delhi High Court

Case No : Income-tax Reference No. 143 of 1978

Commissioner of Income Tax APPELLANT

Vs

Nihal Chand Rekyan RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:

Income Tax Act, 1961 — Section 263, 271(1)

Citation : (1999) 156 CTR 59 : (2000) 242 ITR 45 : (2002) 123 TAXMAN 353

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : Sanjiv Khanna, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

Arun Kumar, J.—At the instance of the Revenue, u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this court, in respect of the assessment year 1970-71 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in quashing the direction given by the Commissioner of Income Tax u/s 265 of the Income Tax Act, 1961, to the Income Tax Officer to initiate penalty proceedings u/s 271(1)(a) of the Act, against the assessed for the assessment year 1970-71 ?"

In so far as this court is concerned the issue raised is no longer rest Integra. The scope of powers of the Commissioner u/s 263 of the Act came up for consideration before this court in Addl Commissioner of Income Tax, Delhi-I Vs. J.K. D''costa, , and it was held that even if, while examining the records of an assessment order in exercise of his powers of revision under the said section, the Commissioner finds that the Assessing Officer has not initiated penalty proceedings, he cannot direct initiation of penalty proceedings because penalty proceedings are not a part of assessment proceedings. It was, thus, held that the Commissioner cannot pass an order u/s 263 of the Act pertaining to penalty.

2. Following the said judgment, with which we are in respectful agreement, the question is answered in the affirmative, i.e., in favor of the assessed and against the Revenue.

3. No costs.