(1984) 04 PAT CK 0016

In the Patna High Court

Case No : Taxation Case No. 63 of 1974

Commissioner of Income Tax APPELLANT

Vs

P.N. Prasad RESPONDENT

Date of Decision : 16-04-1984

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

Citation : (1985) 44 CTR 122 : (1984) 150 ITR 274 : (1984) 19 TAXMAN 249

Hon'ble Judges : Sushil Kumar Jha, J;Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Saran, for the Appellant; Arun Kumar Jha, for the Respondent

Judgement

1. This is a reference made by the Income Tax Appellate Tribunal, Patna Bench ''A'', Patna, u/s 256(1) of the I.T. Act, 1961, and a statement of case has been duly submitted. The question of law referred for our opinion is as to "whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the quantum of penalty to be imposed in this case had to be on the basis of law which was in force in the assessment year 1966-67 and not on the basis of the amended law which came into force from April 1, 1968?"

2. Since the point is clearly covered by a catena of decisions, we need not go into any detailed statement of facts. All that is relevant to note here is that in paragraph No. 7 of the statement of case, the Tribunal has stated that as regards the quantum of penalty, it was of the view that the law which came into force from April 1, 1968, enhancing the scale of penalty could be applied to the concealment in respect of the assessment year 1968-69 and not to an earlier year, the fact that the return of the assessee was filed after April 1, 1968, would not change the position regarding the quantum of penalty. And considering the law applicable in the assessment year 1966-67, the Tribunal held that the penalty was to be imposed on the basis of the tax avoided on that basis and, therefore, it reduced the penalty to the extent of Rs. 2,000 only from a larger

amount as imposed by the IAC in accordance with the amended law which came into force with effect from April 1, 1968. .

3. It has been repeatedly held that when penalty proceedings are initiated, the quantum of penalty to be imposed is to be governed with reference to the date on which the return was filed. If reference be needed, we may refer the case of Brij Mohan Vs. Commissioner of Income Tax , New Delhi, , Commissioner of Income Tax Vs. Monghyr Gun Manufacturing Co-operative Society Ltd., , and CIT v. Jammuna Prasad Sah [1983] Tax 71 apart from a number of other decisions. Learned counsel for the assessee submitted that, in this case, the original return was filed before April 1, 1968. That, however, will not make any difference since the last return that was filed was admittedly after April 1, 1968. And the Tribunal has proceeded upon that assumption. We are, accordingly, constrained to hold that the Tribunal has completely misdirected itself on a question of law. We, accordingly, answer the question referred to us for our opinion in favour of the Revenue and against the assessee and hold that, on the facts and in the circumstances of the case, the Tribunal was not correct in holding that the quantum of penalty to be imposed in this case had to be on the basis of the law which was in force in the assessment year 1966-67, and not on the basis of the amended law which came into force from April 1, 1968.

4. In the circumstances of the case, however, there shall be no order as to costs.

