(1988) 12 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 55 of 1981

Commissioner of Income Tax APPELLANT

Vs

Prem Singh Deviditta Mal RESPONDENT

Date of Decision : 02-12-1988

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 274, 274(2)

Citation : (1989) 177 ITR 236

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; B.S. Gupta and Sanjay Bansal, for the Respondent

Judgement

S.S. Sodhi, J.—The matter here pertains to the imposition of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), after the deletion of Section 274(2) of the Act by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976.

2. The facts, in so far as they are relevant here, are that on April 15, 1974, the Income Tax Officer finalised the assessment for the year 1963-64. Later, on January 31, 1978, he made a reference to the Inspecting Assistant Commissioner for imposition of penalty upon the assessee as the quantum of concealed income was more than Rs. 25,000. The Inspecting Assistant Commissioner, by his order of December 15, 1979, levied a penalty of Rs. 42,339 u/s 271(1)(c) of the Act. This penalty was, however, deleted by the Tribunal, by its order of September 22, 1980, on the ground that the Inspecting Assistant Commissioner had been divested of his jurisdiction to levy the penalty after April 1, 1976, by the passing of the Taxation Laws (Amendment) Act, 1975.

3. It is in this context that the following questions of law have been referred to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the order passed by the Inspecting Assistant Commissioner on December 15, 1979, levying penalty of Rs. 42,339 u/s 271(1)(c) of the Income Tax Act on the ground that the Inspecting Assistant Commissioner could not levy such penalty after April 1, 1976 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in ignoring the fact that the penalty proceedings u/s 271(1)(c) had already been commenced/initiated by the Income Tax Officer on April 15, 1974, (i.e. before April 1, 1976) during the course of assessment proceedings and the Inspecting Assistant Commissioner was competent to levy penalty in this case even though a formal reference was made to him after April 1, 1976?"

4. The matter here is covered by the decision of the Full Bench of our court in Commissioner of Income Tax Vs. Mohinder Lal, . In this case, the assessee had filed its return for 1973-74 and the Income Tax Officer completed the assessment in March, 1976, Later, the Income Tax Officer found that the assessee had concealed an income of Rs. 29,100 odd and in December, 1976, he referred the case to the Inspecting Assistant Commissioner for imposition of penalty. The Inspecting Assistant Commissioner imposed a penalty but the Tribunal cancelled it on the ground that both at the time when the penalty proceedings were referred to the Inspecting Assistant Commissioner and he assumed jurisdiction and also at the time when the order was passed, that is, February 25, 1978, he had no jurisdiction in view of the deletion of Sub-section (2) of Section 274 with effect from April 1, 1976, by the Taxation Laws (Amendment) Act, 1975. It was held that the Income Tax Officer had no option but to refer the case to the Inspecting Assistant Commissioner the moment he had completed the assessment proceedings and came to the conclusion that the amount of income concealed was more than Rs. 25,000. The reference would, therefore, be deemed to have been made and the Inspecting Assistant Commissioner seized of the matter on March 1976, and not on December 1976, when the reference was actually sent. The Inspecting Assistant Commissioner''s jurisdiction was not thus divested by the amendment with effect from April 1, 1976.

5. Mr. B.S. Gupta, appearing for the assessee, sought to contend that the view of the Full Bench in Commissioner of Income Tax Vs. Mohinder Lal, deserved reconsideration in view of the Full Bench decision of the High Court of Kerala in Commissioner of Income Tax Vs. P.I. Issac and Others, where a somewhat contrary view appears to have been taken. We are, however, not inclined to agree to this view and prefer instead to follow the judgment of our own Full Bench. The reference is accordingly answered in the negative, in favour of the Revenue and against the assessee.

6. There will be no order as to costs

