(1974) 12 AHC CK 0008

In the Allahabad High Court

Case No : Income-tax Reference No. 69 of 1969

Commissioner of Income Tax APPELLANT

Vs

Rameshwardas Ram Narain RESPONDENT

Date of Decision : 04-12-1974

Acts Referred:
Income Tax Act, 1922 — Section 28(1), 31(3)

Citation : (1977) 107 ITR 710

Hon'ble Judges : Satish Chandra, J;Gopi Nath, J

Bench : Division Bench

Advocate : R.R. Misra, for the Appellant; Ashok Gupta, for the Respondent

Judgement

Satish Chandra, J.—For the assessment year 1951-52 the Income Tax Officer, D-Ward, Meerut, by his order dated May 1, 1964, imposed upon the assessee a penalty of Rs. 15,000 u/s 28(1)(c) of the Indian Income Tax Act, 1922. The order stated that the previous approval of the Inspecting Assistant Commissioner for imposing the penalty had been obtained, but on appeal before the Appellate Assistant Commissioner it was established that the Income Tax Officer sent his letter to the Inspecting Assistant Commissioner seeking his approval after the order of penalty was passed. It was held that the order imposing penalty on the assessee was without jurisdiction because it was, in fact, passed without the requisite approval. At the end of the order of the Appellate Assistant Commissioner it was further observed that "the Income Tax Officer should take such action according to law as he deems necessary in this case ".

2. The assessee felt aggrieved at this direction and filed an appeal before the Income Tax Appellate Tribunal. The Tribunal held that u/s 31(3)(f) of the Indian Income Tax Act, 1922, the Appellate Assistant Commissioner had power in the case of an order u/s 28 to either confirm or cancel or vary it so as either to enhance or reduce the penalty. This provision was interpreted as not conferring upon the Appellate Assistant Commissioner any jurisdiction to make the direction of the kind that he made in the appellate order. On this view, the last sentence

mentioned above was cancelled, and to this extent the assessee''s appeal was allowed.

3. At the instance of the Commissioner of Income Tax, the Tribunal has referred the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the direction of the Appellate Assistant Commissioner in his order against the penalty imposed u/s 28(1)(c) ?"

4. Section 31(3)(f) of the Act confers appellate jurisdiction with regard to an order u/s 28. Under it there is no power of making direction of the kind the Appellate Assistant Commissioner has done in the present case. In the next place, the Income Tax Officer cannot, in law, proceed for imposition of penalty u/s 28(1)(c) merely because the Appellate Assistant Commissioner gives a direction in this regard. If in law he did not have any jurisdiction to take any further action he cannot validly take such action. The direction in the appellate order that the Income Tax Officer should take such action according to law as he deems necessary in this case might have confused the situation. The Income Tax Officer was bound to take some action in accordance with the appellate direction.

5. For this reason also the Tribunal was justified in setting aside the direction.

6. Our answer to the question referred to us is in the affirmative and in favour of the assessee and against the department. The assessee shall get his costs which are assessed at Rs. 200.