(1985) 08 MP CK 0046

In the Madhya Pradesh High Court

Case No : Miscellaneous C.C. No. 228 of 1981

Commissioner of Income Tax APPELLANT

Vs

Ramprakash Saraf RESPONDENT

Date of Decision : 02-08-1985

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 274(2)

Citation : (1986) JLJ 788

Hon'ble Judges : K.K. Adhikari, J;J.S. Verma, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

J.S. Verma, J.

1 This reference u/s 256 (1) of the Income Tax Act, 1961, at the instance of the Revenue is to decide the following questions of law, namely;

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the lis to levy penalty u/s 271 (1) (c) read with section 274 (2) of the I T. Act. 1961 arose on the date (i. e. 31-3-1976) of the I.T.O.''s order recording satisfaction about the concealment of income before the change of law on 1-4-1976 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the LA C. acted without jurisdiction in passing the penalty order under S. 271 (1) (c) read with Sec. 274 (2) of the I/ T. Act, 1961 and that the said order is bad in law?

2. This reference relates to the assessment year 1975-76. The assessee derived income from purchase of old silver ornaments and the sales thereof after converting them into new ones. There was a search in the business and and residential premises of the assessee on 8th and 9th October, 1974, when certain articles were seized from his possession. In the assessment order passed by the

Income Tax Officer on 31-1-1976 be held that the assessee concealed the income of Rs. 80,697/-. Accordingly, the I.T.O., by the same order, initiated penalty proceedings against the assessee under Sec. 271 (l)(c) of the Income Tax Act. The I. T O., after giving opportunity to the assessee to show cause against imposition of penalty, as required by subsection (1) of section 274, made a reference to the Inspecting Assistant Commissioner on 15-7-1977 under sub section (2) of section 274 of the Act, even though subsection (2) of section 274 of the Act had been deleted by the Taxation Laws (Amendment) Act, 1975 with effect from 1. 4. 1976 and according to the proviso to sub- clause (iii) of clause (c) of sub-section 271 of the Act, the I.T.O. himself was empowered to impose penalty with the previous approval of the I.A.C. where concealment of income was in excess of Rs. 25,000/-. The I. A. C, after issuing a fresh notice to the assessee and considering his reply, imposed a penalty of Rs. 80,000/- u/s 271 (1) (c) read with section 274 (2) by his order dated 23-8-1978.

3. Aggrieved by the I.A.C.''s order, the assessee preferred an appeal to the Tribunal contending that the I.A.C. hid no jurisdiction to impose penalty after the amendments made with effect from 1-4-1976. This contention of the assessee has been accepted by the Tribunal and the penalty imposed by the I.A.C. has been set aside. Hence this reference at the instance of the Revenue to answer the aforesaid questions.

4. The question really is whether the I.T.O. was empowered to make a reference to the I. A. C after the amendments made in the Act with effect from 1-4-1976, enabling the I A. C. to impose the penalty in the present case. Admittedly, as a result of the omission of sub-section (2) of section 274 with effect from 1-4-1976, the provision enabling the I.T.O. to make such a reference to the I.A.C. ceased to exist. Obviously, such a provision was unnecessary when with effect from the same date i. e. 1 4-1976, the I.T.O. was empowered to impose penalty in all cases subject only to the condition of the I.A.C.''s previous approval, where concealment of income exceeded a sum of Rs. 25,000/- according to the proviso to sub clause (iii) of clause (c) of sub-section (1) of section 271 of the Act. S. 274 (2) providing for reference by the I.T.O. to the I A. C. in cases where concealment of income exceeds Rs. 25,000/- was necessary prior to 1-4-1976 on account of fact that it was I. A.C. and not the 1. T. O. who was then empowered to make the order imposing penalty in those cases. The plain language of the proviso to sub clause (iii) of clause (c) of sub-section (1) of section 271 indicates that the point of time indicated thereby is the time when the order imposing penalty has to be made and not the time of initiation of penalty proceedings. This also indicates that the law applicable in the present case for this purpose is the law as it existed after the amendments made with effect from 1-4-1976 since the only thing done in the present case prior to that on 31-3-1976 was to initiate penalty proceedings and even the reference to the I.A.C. was made by the I.T.O. only on 15 7-1977.

5. The above view taken by us is also in accord with the earlier view of this Court

dealing with a similar question as a result of similar amendments made with effect from 1-4-1971 in S 271 (1) (c) and 274 (2) of the Act. As a result of those amendment made with effect from 1-4-1971, the question .arose whether the reference made by the I.T.O. to the I.A.C. before 1-4-1971 was invalidated by the amendment or not. In Commissioner of income tax M.P. v. A.N. Tiwari (1980) 124 1TR 680, it was held that references validly made by the I.T.O. before 1-4-1971 according to the law as it then stood, were not invalidate by the amendments made with effect from 1-4-1971 and the same were governed by the un-amended provision. In other words, it was the date of making the reference and not the date of initiation of penalty proceedings which was taken as the determining factor for this purpose. That decision was followed subsequently in Addl. Commissioner of Income Tax Vs. Nandkishore (Legal heir of Mohanlal Ramniwal), and Commissioner of Income Tax Vs. Fakirchand Dayaram, . The ratio of these earlier decisions supports the conclusion we have reached in the present case.

6. Consequently, this reference is answered in favour of the assesses and against the Revenue as under :

The Tribunal was justified in holding that the I A.C. had no jurisdiction in the present case to make an order imposing penalty u/s 271 (1) (C) read with section 274 (2) the I.T. Act, 1961.

In view of this answer to the question No 2 referred to us, which alone really arises for decision, there is no need to give any answer to the above quoted question No. 1 which also appears to be wrongly framed. Parties shall bear their own costs.

