(1977) 08 GAU CK 0001

In the Gauhati High Court

Case No : Income-tax Reference No''s. 6 of 1972 and 1 of 1976

Commissioner of Income Tax APPELLANT

Vs

S. Sardar Singh RESPONDENT

Date of Decision : 19-08-1977

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

Citation : (1977) 08 GAU CK 0001

Hon'ble Judges : D. Pathak, J;Baharul Islam, J

Bench : Division Bench

Advocate : R.K. Manisana Singh, for the Appellant; Priyananda Singh, for the Respondent

Judgement

Baharul Islam, J.—The Income Tax Appellate Tribunal, " A " Bench, Calcutta, has referred the following question to us for opinion :

" Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the order of penalty passed by the Inspecting Assistant Commissioner u/s 271(1)(c) read with Section 274 of the Income Tax Act, 1961, was invalid and, therefore, could not stand ?

2. In the course of examination of the accounts of the assessee for the assessment year 1966-67-, the Income Tax Officer found that the assessee had concealed his income and furnished inaccurate particulars of such income. He, therefore, directed initiation of proceedings u/s 271(1)(c) read with Section 274 of the Income Tax Act, 1961 (hereinafter called " the Act "), and issued notice to the assessee on November 25, 1968. Thereafter, he referred the matter to the Inspecting Assistant Commissioner as the minimum penalty leviable exceeded Rs. 1,000. The Inspecting Assistant Commissioner issued notice to the assessee u/s 274 read with Section 271(1)(c) of the Act. The assessee appeared. After hearing him, the Inspecting Assistant Commissioner imposed a penalty of Rs. 5,600, the maximum penalty leviable being Rs. 16,720 and the minimum being Rs. 2,240.

3. The assessee preferred an appeal before the Tribunal. It was urged by the assessee before the Tribunal that the penalty proceedings were not properly initiated as the Inspecting Assistant Commissioner was not satisfied on the concealment of income by the assessee during the course of the assessment proceedings.

4. Relying on a single judge decision of the Calcutta High Court in Ram Chandra Sarda v. Income Tax Officer [1970] 78 ITR 3, which was binding on it, the Tribunal held that the satisfaction was a condition precedent to the exercise of the power u/s 271 of the Act, which must be arrived at before the penalty proceedings were commenced. It further held that in a case referred to the Inspecting Assistant Commissioner by the Income Tax Officer u/s 274(2), the power to initiate proceedings and exercise powers under the provisions of Section 271 also vest with the Inspecting Assistant Commissioner, with the result that the Tribunal set aside the" order of penalty passed by the Inspecting Assistant Commissioner for Income Tax.

5. The material portion of Section 271 may be quoted :

" 271(1) If the Income Tax Officer or the Appellate Assistant Commissioner, in the course of any proceedings under this Act, is satisfied that any person--......

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty--...

(iii) in the cases referred to in Clause (c), in addition to any tax payable by him, a sum which shall not be less than twenty per cent. but which shall not exceed one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income." The material portion of Section 274 also may be quoted :

" 274. Procedure.--(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty......"

6. On a perusal of the above provisions of the law, it appears that the condition precedent for initiation of proceedings is ingrained under Sub-section (1) of Section 271. The condition precedent is the satisfaction of the Income Tax Officer that " any person is concealing the particulars of his income ". Under the said sub-section the satisfaction is of the Income Tax Officer or of the Appellate

Assistant Commissioner, as the case may be. If and when he is so satisfied, he can initiate proceedings and exercise all powers vested in him under the section, including levy of penalty on the person. But, if the penalty exceeds a sum of Rs. 1,000, Sub-section (2) of Section 274 takes away his power to levy the penalty. In such a case, the Income Tax Officer is to make a reference to the Inspecting Assistant Commissioner "for the purpose", which, in our opinion, means the power to levy the penalty. Sub-section (2) of Section 274 does not lay down that in order to exercise all the powers conferred on him, the Inspecting Assistant Commissioner is to be satisfied on the concealment of income, as the Income Tax Officer is to be under Sub-section (1) of Section 271. Section 271 read with Section 274 contemplates two stages. The first stage is contemplated by Sub-section (1) of Section 271, and it is the initiation of the penalty proceeding by the Income Tax Officer or the Appellate Assistant Commissioner, as the case may be, after his satisfaction on the concealment of income. The second stage is giving an opportunity to the person concerned of being heard and, after hearing, the levy of penalty. The second stage is contemplated by Sub-sections (1) and (2) of Section 274 which come into play only after the first stage, namely, the initiation of such proceedings. After the initiation of proceedings only he will issue necessary notice to the person concerned and give the latter the opportunity of being heard, and after hearing, levy penalty. But, in case the imposable penalty exceeds Rs. 1,000, the Income Tax Officer is to refer the case to the Inspecting Assistant Commissioner. The Inspecting Assistant Commissioner comes into the picture, and acquires jurisdiction only when the case is referred to him by the Income Tax Officer under Sub-section (2) of Section 274 of the Act. Satisfaction of the Income Tax Officer u/s (1) of Section 271 gives him jurisdiction to initiate the proceedings; reference of the case by the Income Tax Officer under 274(2) gives jurisdiction to the Inspecting Assistant Commissioner. Sub-section (2) of Section 274 does not speak of any satisfaction of the Inspecting Assistant Commissioner and initiation of proceedings by him before the exercise of " all the powers conferred under this Chapter (Chapter XXI) for the imposition of penalty."

7. The Division Bench of the Calcutta High Court in the case of Commissioner of Income Tax Vs. A.K. Das, took the same view as we have. Their Lordships held :

" On the interpretation of Sections 271, 274 and 275 of the Act of 1961, it is the Income Tax Officer that is the institutional authority where penalty proceedings are concerned. The foundation for penalty is the Income Tax Officer''s satisfaction in the course of assessment proceedings that there has been concealment. Unless the Income Tax Officer or the Appellate Assistant Commissioner initiates, the Inspecting Assistant Commissioner cannot initiate. Under the Act of 1961, if the case falls within Section 271(1) concerning a case of concealment read with Sub-clause (c) thereof and where the minimum penalty imposable exceeds Rs. 1,000, he is bound to refer the case to the Inspecting Assistant Commissioner who is then empowered to impose a penalty in that case."

8. In view of this decision of the Division Bench of the Calcutta High Court, the decision of the learned single judge in Ram Chandra Sarda Vs. Income Tax Officer, "B" Ward and Others, does not appear to be good law.

9. The Andhra Pradesh High Court in the case of Shivlal Kundanmal v. Commissioner of Income Tax [1973] TLR 520 was also of the same view. Their Lordships held :

" In our considered opinion, the initiation of the penalty proceedings does not start with the issuance of notice by the Inspecting Assistant Commissioner but the recording of satisfaction that it was a fit case for penalty by the Income Tax Officer or the Appellate Assistant Commissioner, as the case may be, contemplated by Section 271 must be construed to be the initiation of the penal proceedings."

10. In the result, we answer the question in the negative and in favour of the department.

11. The reference is disposed of accordingly. The assessee shall bear costs of this reference. Hearing fee Rs. 100.

D. Pathak, J.

12. I agree.

