

(1979) 11 DEL CK 0047

In the Delhi High Court

Case No : Income-tax Reference No. 70 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Sant Singh

RESPONDENT

Date of Decision : 23-11-1979

Acts Referred:

Citation : (1981) 132 ITR 552

Hon'ble Judges : S. Ranganathan, J; D.R. Khanna, J

Bench : Division Bench

Advocate : M.L. Verma, for the Appellant; Parduman Lal Kumar, for the Respondent

Judgement

1. This is a reference at the instance of the Commissioner of Income Tax u/s 256(2) of the I.T. Act, 1961.
2. The respondent Sant Singh, was called upon to file the return for the assessment year 1958-59 u/s 22(2) of the Indian I.T. Act, 1922. The return should have been filed on or before October 3, 1958. The return was, however, filed on August 14, 1962. The assessment was completed u/s 143(3) of the I.T. Act, 1961, on February 28, 1963. A demand of Rs. 15,739 was resulted.
3. Simultaneously, with the passing of the assessment order, the ITO issued a notice to the assessed u/s 294 read with Section 271(1)(a) of the I.T. Act, 1961, calling upon the assessed to show cause why a penalty should not be imposed for the delay of three years and nine months in the filing of the return. Not satisfied with the Explanation given by the assessed the ITO imposed a penalty of Rs. 7,869, being 50% of the tax due from the assessed. This order was confirmed by the AAC on appeal.
4. However, on further appeal, the Tribunal while agreeing with the ITO and the AAC that the Explanation given by the assessed for the delay in the filing of the return was not satisfactory and also agreeing with the penalty to be imposed u/s 271(1)(a) of the I.T. Act, 1961, took the view that the quantum of the penalty

had to be determined bearing in mind that the default was committed at a time when the Indian I.T. Act, 1922, was in force. In their view, Therefore, the penalty imposable should be commensurate with the penalty imposable when that Act was in force. They, Therefore, imposed a penalty of Rs. 1,000 only and directed a refund of the excess amount to the assessed.

5. The Commissioner of Income Tax has come on reference to this court for our opinion on the following question:

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in reducing the penalty of Rs. 7,869 imposed by the Income Tax Officer u/s 271(1)(a) for the assessment year 1958-59, to Rs. 1,000?"

6. In our opinion this reference has to succeed. The Supreme Court has held in the case of Jain Bros. and Others Vs. The Union of India (UOI) and Others, that in a case governed by Section 297(2)(g) the penalty has to be imposed u/s 271(1)(a) of the 1961 Act. That being so, the penalty was rightly imposed under that section. We are unable to see how in view of this decision it is possible to reduce the amount of penalty below the rates prescribed by Section 271(1)(a). The view taken by the Tribunal, that since the period of default was prior to April 1, 1962 the penalty referable to that period at least should be reduced, cannot be supported in view of the decision of this court in Commissioner of Income Tax, Delhi Vs. Maya Rani Punj, , which directly deals with a situation similar to that in the present case. In view of the above decision of the Supreme Court and of this court we have to answer the question referred to us by saying that the Tribunal was not justified in reducing the penalty of Rs. 7,869 imposed by the ITO to Rs. 1,000.

7. Mr. P. L. Kumar, learned counsel for the assessed, has referred to certain decisions under the W.T. Act. These decisions are: Commissioner of Wealth-tax Vs. Ram Narain Agrawal, , COMMISSIONER OF WEALTH-TAX, MADRAS Vs. P. C. M. SUNDARAPANDIAN AND OTHERS., , Commissioner of Wealth Tax, Mysore Vs. C.S. Manvi and Others, , T. K. ROY Vs. COMMISSIONER OF WEALTH-TAX. S. KARAM SINGH v. COMMISSIONER OF WEALTH-TAX S. N. ROY v. COMMISSIONER OF WEALTH-TAX., , Commissioner of Wealth-tax Vs. Chunni Lal Anand, and Addl. Commissioner of Wealth Tax Vs. Smt. Manjuladevi Muchhal, . In our opinion the ratio of these decisions does not help the counsel for the respondent. Those were cases in which the court was concerned with the question as to whether the sections imposing penalty were applicable in the form in which they stood at the time of imposition of the penalty or on the date when the infringement took place. The courts held that the provision of law to be applicable would depend upon the date on which the infringement took place. This principle is unexceptionable and in fact has recently been laid down by the Supreme Court also in the case of Brij Mohan Vs. Commissioner of Income Tax , New Delhi, . But in the present case no controversy as to whether the provisions of Section 28 are applicable or the provisions of Section 271 should apply can survive. The question has already been settled by the Supreme Court in the case of Jain Bros.

and Others Vs. The Union of India (UOI) and Others, . If Section 271(1)(a) applies as held by the Supreme Court then we are unable to find any logic or statutory provision which would justify the applicability of the terms of Section 28 by reference to the period of default as has been done by the Tribunal. It appears to us that the matter is already covered by the decision of this court. We do not see any reason to differ from that decision.

8. We, Therefore, answer the question referred to us, as already mentioned, in favor of the applicant and against the assessed. In the circumstances, we make no order as to costs.