

(1979) 11 DEL CK 0005

In the Delhi High Court

Case No : Income-tax Reference No. 26 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Sardar Amarjit Singh

RESPONDENT

Date of Decision : 21-11-1979

Acts Referred:

Citation : (1981) 132 ITR 365

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

Bench : Division Bench

Advocate : M.L. Verma and S. Mukherjee, for the Appellant; Party in person, for the Respondent

Judgement

Ranganathan, J.—This is a reference made by the Income Tax Appellate Tribunal u/s 256(1) of the I.T. Act, 1961. The reference relates to assessment years 1960-61 and 1961-62.

2. The assessments of the respondent Sardar Amarjit Singh, for the above two assessment years were completed by the ITO on 30th November, 1963. It may be mentioned here that the return for the assessment year 1960-61 had been filed on November 2, 1962, and that for the assessment year 1961-62 on March 8, 1963. The assessments having been completed after April 1, 1962, the ITO took proceedings u/s 271(1)(a) for the delay in the filing of the returns. After considering the assessed's Explanation, he imposed on the assessed penalties of Rs. 3,276 and Rs. 2,328, respectively, for the two years. This was levied by him at 2% of the tax payable for every month of default as provided in Section 271(1)(a). These penalties were confirmed by the AAC.

3. The assessed preferred further appeals to the Appellate Tribunal. The Tribunal held that the assessed had committed default and that the levy of penalty was called for. It also rejected the contention urged for the assessed that the provisions of Section 275(1) had not been complied with. However, the Tribunal was of opinion that the penalties levied were highly excessive. In the view of the

Tribunal since the defaults had been committed at a time when the Indian I.T. Act, 1922, was in force, the penalties had also to be imposed in consonance with that Act. In this view, the Tribunal reduced the penalties to Rs. 300 for each of the two assessment years.

4. At the instance of the Commissioner, the following two questions have been referred for our decision :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in reducing the penalty livable u/s 271(1)(a)(i) at a figure lower than the sum equal to two per cent. of the tax for every month during which the default continued but not exceeding in the aggregate fifty per cent. of the tax ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in its decision that there was compliance with Section 275(1) of the Income Tax Act, 1961 ?"

5. It may be mentioned here that the second question was referred by the Tribunal suo motu. As already; pointed out, the Tribunal had hold that there had been a compliance with the provisions of Section 275(1) of the I.T. Act, 1961, and the Commissioner had not sought a reference of this question.

6. So far as the first question is concerned, we find that it is concluded by the decision of this court in Commissioner of Income Tax, Delhi Vs. Maya Rani Punj, . In that case, this court has upheld the levy of penalty in similar circumstances by reference to the provisions of the new Act. The High Court has held that while the ITO has a discretion to decide to levy or not to levy a penalty u/s 271(1)(a) once he decides to do so, he has to levy a penalty at 2% and he has no discretion to levy the penalty at a lower or higher rate. The action of the Tribunal in reducing the penalty for the same reasons as in the present case to a figure less than a sum of 2% was disapproved by this court. Having regard to the decision of this court we have to hold that the Tribunal was not justified in reducing the amount of penalty imposed by the ITO and confirmed by the AAC. The question is answered in the negative and in favor of the revenue.

7. So far as the second question is concerned we are unable to see how this question at all arises for consideration. Section 275 as it stood at the relevant time provided that no order imposing a penalty could be passed "after the expiration of two years from the date of the completion of the proceedings in the course of which the proceedings for the imposition of penalty have been commenced", that is to say, after two years from the date of completion of the assessment. We have already pointed out that the assessments for the two years had been completed on November 30, 1963. The penalty orders for both the years are dated October 19, 1964. It is, Therefore, clear that penalty orders had been passed well within the time-limit prescribed u/s 275(1).

8. There is also another aspect to Section 275. It also contains implicitly a limitation that the penalty proceedings should be commenced before the

completion of the assessment. It has been a matter of some controversy as to when penalty proceedings could be said to have commenced. An argument had been raised in some cases that penalty proceedings can be said to have been commenced only when the ITO issues a notice u/s 274 to the assessed to show cause why a penalty should not be imposed and that, for a valid levy of penalty, the notice u/s 274 should have been issued before the completion of the assessment. It has been held in a number of judicial decisions that penalty proceedings can be said to have commenced if the ITO records a note directing the issue of the notice u/s 274 before the assessment is completed and that it is not necessary that the notice u/s 274 should itself be issued by then. But, in the present case, even this controversy does not arise. The Tribunal has found that the notices u/s 274 had been issued on November 20, 1963, itself, that is, on the same date as the assessment. The assessed had not challenged the validity of the issue of the notices as subsequent to the assessment before the AAC nor were any facts brought to the notice of the Tribunal to show that the notices had not been factually issued before the completion of the assessment. In these circumstances, the Tribunal's finding that the provisions of Section 275(1) had been complied with has to be upheld. We, accordingly, answer the second question in the affirmative and in favor of the revenue.

9. Both the questions are, thus, answered in favor of the applicant, i.e., the revenue. There will be no order as to costs.