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In the Bombay High Court

Case No : Income-tax Reference No. 602 of 1976

Commissioner of Income Tax APPELLANT

Vs

S.D. Pande RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 274, 274(2), 275

Citation : (1992) 194 ITR 456

Hon'ble Judges : T.D. Sugla, J;Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetley, for the Appellant; V.H. Patil, for the Respondent

Judgement

T.D. Sugla, J.—The Income Tax Appellate Tribunal has referred to this court the following two questions as questions of law u/s 256(1) of the Income Tax Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the penalty orders passed by the Inspecting Assistant Commissioner u/s 271(1)(c) read with section 274(2) of the Act were without jurisdiction ?

(2) Whether, on the facts and in the circumstances of the case the penalty orders passed u/s 271(1)(c) read with section 275 of the Act, on March 28, 1972, were barred by limitation ?"

2. In view of this court''s judgment in the case of Commissioner of Income Tax, Poona Vs. Gangadas Topandas, and in the case of Commissioner of Income Tax Vs. Abdullabhai Hassanali, , it has to be held that, for the purpose of considering whether reference to the Inspecting Assistant Commissioner u/s 274(2) of the Income Tax Act is valid or not, the law on the date of reference is relevant.

3. In the present case, the assessments were completed on March 7, 1970. Penalties have been imposed by the Inspecting Assistant Commissioner u/s 271(1)(c) on March 24, 1972. There is no indication in the order of the

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Inspecting Assistant Commissioner imposing penalty or in the order of the Tribunal or in the statement of the case as to the date of reference by the Income Tax Officer to the Inspecting Assistant Commissioner u/s 274(2). As stated earlier, this is the material date with reference to which it can be decided whether or not the order of the Inspecting Assistant Commissioner imposing penalty was valid.

4. Mr. Jetley, learned counsel for the Department, made an attempt to persuade us to assume that the date of reference was March 7, 1970, on which date the Income Tax Officer had issued notice to the assessee u/s 274. Incidentally, that is also the date on which the assessment was completed. He stated that the notice u/s 274 and the reference of the penalty proceeding to the inspecting Assistant Commissioner by the Income Tax Officer are generally issued/ made simultaneously. We do not find it possible to accept Shri Jetley''s statement, particularly as, in both the cases decided by our court, it was found as a fact that the assessment were made and notices u/s 274 were issued long before the reference was made by the Income Tax Officer to the Inspecting Assistant Commissioner. It cannot, therefore, be assumed, as contended by Shri Jetley, that the order of reference was made on the date on which the order of the same assessment or notice u/s 274 was issued by the Income Tax Officer.

5. In the absence of the date of reference, it is not possible to answer the first question. The first question is, therefore, returned unanswered.

6. The second question is at the instance of the assessee. In view of the fact that we are returning the first question referred to us unanswered, it is not necessary to answer the second question.

7. The reference is, thus, returned unanswered. No order as to costs.

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