(1990) 07 OHC CK 0030

In the Orissa High Court

Case No : Special Jurisdiction Case No. 26 of 1980

Commissioner of Income Tax APPELLANT

Vs

Shivkumar Agrawal RESPONDENT

Date of Decision : 18-07-1990

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

Citation : (1990) 186 ITR 734

Hon'ble Judges : S.C. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : S.C. Ray, Genral, for the Appellant; R. Sharma, for the Respondent

Judgement

S.C. Mohapatra, J.—At the instance of the Department, a statement of the case was called for from the Tribunal on the following question of law arising out of the order :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty u/s 271(1)(c) for the year ?"

2. The same question in another form was referred by the Tribunal to this court which has been answered in the decision reported in Commissioner of Income Tax Vs. Dhadi Sahu, . Admittedly, the said decision is against the Department. Statement in this case was called for on the ground that the correctness of the said decision was pending in the Supreme Court.

3. Mr. S. C. Ray, learned Advocate General and standing counsel for the Income Tax Department, submitted that the Supreme Court has not yet decided the matter.

4. There is no necessity to keep the reference pending awaiting the decision of the Supreme Court. It is true that imposition of penalty by the Assistant Commissioner in view of the amendment of the Act is without jurisdiction as held by this court in the decision reported in Commissioner of Income Tax Vs. Dhadi

Sahu, . However, there is no dispute about the validity of the initiation of the proceeding. Where a proceeding has been validly initiated but has been disposed of by an officer having no jurisdiction, the proceeding itself does not come to an end. The same is to be finalised by the officer having jurisdiction. Therefore, while accepting the decision of the Tribunal with regard to the cancellation of the imposition of penalty by the Assistant Commissioner, as held by the Tribunal, we are inclined to hold that the proceeding has not yet been finalised until the Income Tax Officer who has jurisdiction has finally disposed of the prdceeding.

5. Mr. R. Sharma, learned counsel for the assessee, submitted that in view of the provisions of Section 275 of the Act, the imposition of penalty has become barred by limitation. We need not express our view in that regard at this stage since such a question has not been referred to us. the Income Tax Officer is free to take into consideration Section 275 of the Act while finalising the proceeding.

6. In view of the aforesaid discussion, while answering the question in the affirmative and against the Revenue, we clarify that the proceeding has not yet culminated which is to be brought to an end by the Income Tax Officer who shall follow the decision of the Supreme Court if it comes by the time of disposal. No costs.

J.M. Mahapatra, J.

7. I agree.

