
(1980) 07 AHC CK 0066

In the Allahabad High Court

Case No : Income-tax Reference No. 528 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Smt. Jagjit Kaur

RESPONDENT

Date of Decision : 07-07-1980

Acts Referred:

Income Tax Act, 1961 — Section 143, 143(3), 144, 147, 2(40)

Citation : (1980) 126 ITR 540

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.K. Gulati and A. Gupta, for the Appellant; S.K. Yogeshwar, for the Respondent

Final Decision : Disposed Off

Judgement

C.S.P. Singh, J.—The Income Tax Appellate Tribunal has referred the following question of law for our opinion :

"Whether the Tribunal was in law justified in holding that the assessments framed on the assessee were not regular assessments within the meaning of Section 273(b) read with Section 212(3) of the Income Tax Act, 1961, and upholding the order of the Appellate Assistant Commissioner cancelling the penalties u/s 273(b) ?"

2. The assessment years involved are 1961-62, 1962-63, 1963-64 and 1964-65. The assessments in all these years were framed for the first time u/s 147(a) read with Section 143(3). The assessee had not been assessed prior to the assessment year 1961-62 and had neither filed her estimate of total income for any of those four years, nor paid advance tax as required by Section 213(3). She did not appear before the ITO nor did she file any explanation in respect of the notice served on her to show cause as to why penalty should not be levied u/s 273(b). The ITO levied penalty of Rs. 1,000 each on the assessee u/s 273(b) of the Act for each of the four years. The assessee appealed. The AAC, following the

decision of the Kerala Court in the case of Gates Foam and Rubber Co. Vs. Commissioner of Income Tax, , held that as the assessments were framed u/s 147(a), which were not regular assessments, the provisions of Section 273(b) were not attracted, and no penalty could be levied. The revenue took up the matter in appeal before the Tribunal. The Tribunal reaffirmed the view of the AAC.

3. The only question in this reference is as to whether Section 273(b) applies to cases of assessments u/s 147(a) read with Section 143(3). The relevant part of Section 273(b) is as under :

"273. False estimate of, or failure to Pay, advance tax.--If the Income Tax Officer, in the course of any proceedings in connection with the regular assessment for the assessment year commencing on the 1st day of April, 1970, or any subsequent year, is satisfied that any assessee--.....

(b) has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of Sub-section (3) of Section 212."

4. It will be noticed that Section 273 applies in cases where the ITO is satisfied in the course of any proceedings in connection with the regular assessment that the assessee has failed without reasonable cause to furnish an estimate of the advance tax payable by him in accordance with the provisions of Section 212(3). Section 2(40) defines "regular assessment" meaning the assessment made u/s 143 or Section 144. This definition is made subject to the context in the Act, that is, if there is contextual claim to the contrary, the context will prevail over the definition clause. We do not find anything in the context of Section 273(b) which would impel us to hold that the words "regular assessment" as occurring in Section 273(b) could not be read as required by Section 2(40) as applying to assessments made u/s 143 or Section 144. The Kerala High Court in the case of Gates Foam and Rubber Co. Vs. Commissioner of Income Tax, has taken the same view. Counsel for the revenue urged that inasmuch as Section 2(8) defines the word "assessment" as including reassessment and inasmuch as Section 2(40) does not define the word "assessment", the definition of assessment contained in Section 2(8) should be read into Section 2(40). This line of reasoning may have been fruitful in case Section 2(40) did not specifically mention assessments made u/s 143 or Section 144. Thus, Section 2(40) brands only assessments made u/s 143 and Section 144 as regular assessments. We would, therefore, not be justified in engrafting cases of reassessment in Section 2(40). Mr. Gulati, appearing for the revenue, also urged that under the old Act there were a string of cases where the view was taken that Section 18A(9) of the old Act applied to assessments made u/s 34 and that in cases where no return was filed and no previous assessment was made were taken to be cases of regular assessment. We do not think that any useful purpose could be served by referring to those cases, for the old Act did not contain any provision corresponding to Section 2(40) of the new Act. Thus, inasmuch as Section 2(40) confines a regular assessment to one made either u/s 143 or Section 144, we cannot read the

"regular assessment" as occurring in Section 273 as applying to assessments made u/s 147(a). The lacuna, if any, in the Act can be corrected only by a legislative enactment, and not by a process of judicial interpretation. The Punjab High Court in SMT. KAMLA VATI Vs. COMMISSIONER OF Income Tax (CENTRAL), PATIALA., has taken the same view, and so has the Patna High Court in the case of Commissioner of Income Tax Vs. Ram Chandra Singh, .

5. We, accordingly, answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to its costs, which we assess at Rs. 200. Counsel's fee is also assessed at the same figure.