

(1993) 11 PAT CK 0012

In the Patna High Court

Case No : Taxation Case No. 113 of 1980. November 11, 1993.

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

SMT. KAMLA DEVI RATHI.

RESPONDENT

Date of Decision : 11-11-1993

Acts Referred:

Citation : (1993) 11 PAT CK 0012

Hon'ble Judges : S. N. Jha, J; S. B. Sinha, J; Aftab Alam, J

Bench : Full Bench

Judgement

S. B. SINHA J. - This reference has been made to this court u/s 256(2) of the Income Tax Act, 1961, for answering the following questions :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the law applicable is the law as it stood on the date of filing of the return and not on the date of passing the penalty order and satisfaction about the concealment of income for the purpose of imposing penalty ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing calculation of penalty on the basis of income of Rs. 23,173 when the quantum matter is pending to be decided by the High Court ?"

The fact of the matter lies in a very narrow compass.

The assessee is an individual. He filed a return showing an income of Rs. 7,798, but in the assessment proceeding he was assessed at Rs. 1,02,398. The order of assessment was set aside by the appellate court and the Income Tax Officer was directed to make a fresh assessment.

A fresh assessment was made in terms whereof an addition of Rs. 14,000 was added in the jute account and a sum of Rs. 94,225 was added as income from other sources. Penalty proceedings were initiated and the matter was referred to the Inspecting Assistant Commissioner, and in the said proceedings, the Inspecting Assistant Commissioner, in exercise of his power conferred upon him

u/s 271(1)(c) of the Act, imposed a penalty of Rs. 1,10,602.

An appeal was preferred against the said order and it was held by the Appellate Tribunal that a minimum of 20 per cent. of the tax which the assessee sought to evade during the year under consideration should have been imposed.

The matter came up before a Division Bench of this court and by an order dated May 21, 1992, the matter has been referred to a Full Bench stating as follows :

"In our opinion, this question is squarely covered by the decision of the Supreme Court in the case of Brij Mohan Vs. Commissioner of Income Tax , New Delhi , , wherein with regard to penalty u/s 271(1)(c) of the Act it has been held that when penalty is imposed for the concealment of particulars of income, it is the law ruling at the date on which the act of concealment takes place which is relevant. But the two Bench cases of this court in Commissioner of Income Tax Vs. Bihar Cotton Mills Limited, and Commissioner of Income Tax Vs. M.N. Chatterjee, , have taken a view contrary to the said Supreme Court judgment by placing reliance on two other Supreme Court cases reported in Jain Bros. and Others Vs. The Union of India (UOI) and Others, and Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, . The two decisions relied upon by the earlier Division Benches relate to imposition of penalty u/s 271(1)(a) of the Act for late filing of return. In our opinion, the decisions of the Supreme Court rendered in relation to section 271(1)(a) of the Act have no bearing on the question of quantum of penalty leviable u/s 271(1)(c) of the Act.

Accordingly, this case be placed before the Chief Justice for referring it to a larger Bench."

The question raised in this reference is no longer res integra.

The matter now stands concluded by a decision of the Supreme Court in the case of Commissioner of Income Tax, Lucknow Vs. M/s. Onkar Saran and Sons, wherein the Supreme Court upon taking into consideration a large number of decisions held as follows (at page 6) :

"It would, therefore, appear that the decisions of a majority of the High Courts support the contention raised on behalf of the assessee that, even in a case where a return filed u/s 148 involves an element of concealment, the law applicable for imposition of penalty will be the law as in force at the time of the filing of the original return for the assessment year in question and not the law as it stands on the dates on which returns in response to the notice u/s 148 are filed."

The Supreme Court further observed (at page 8) :

"It will be appreciated that, if the contention of Sri Ahuja is accepted, an anomalous result will follow in certain glaring cases of concealment. Let us take the following illustration. An assessee conceals income in his original return. He gets away with it and the original assessment is completed without detecting the

concealment. Subsequently, a notice is given for assessing the escaped income. In these proceedings, the assessee files a return of income including the escaped income. In this situation, the argument of Sri Ahuja, if accepted, will result in the conclusion that the Department will be helpless in imposing a penalty in such a case. That certainly cannot be the effect of the legal provisions. Again an assessee would completely escape penalty if he does not at all file a return in response to the notice u/s 148. The argument could be that, since a penalty can be imposed only with regard to the return filed in the reassessment proceedings and, since he had filed no such return, he cannot be penalised at all."

This aspect of the matter has been considered by a Division Bench of this court in a recent decision in COMMISSIONER OF INCOME TAX Vs. GIRISH KUMAR KOTHARI. , in Taxation Case No. 40 of 1975 disposed of on July 21, 1993. Mr. K. V. Vidyarthi, learned counsel appearing on behalf of the Revenue, however, has placed strong reliance upon a decision of the Supreme Court in Jain Bros. and Others Vs. The Union of India (UOI) and Others, and relied upon the following observations (at page 116) :

"It may be that the Legislature considered that a separate treatment should be given in the matter of assessment itself and under clauses (a) and (b) of section 297(2), the point of time when a return of income had been filed was made decisive for the purpose of application of the Act of 1922 or the Act of 1961. But merely because the Legislature in its wisdom decided to give a different treatment to proceedings relating to penalty, it is difficult to find discrimination with regard to the classification which has been made in clauses (f) and (g) which are independent of clauses (a) and (b). Although penalty has been regarded as an additional tax in a certain sense and for certain purposes, it is not possible to hold that penalty proceedings are essentially a continuation of the proceedings relating to assessment where a return has been filed.

The majority decision in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, hardly affords any parallel. There the retrospective operation of the Payment of Bonus Act, 1965, which came into force on May 29, 1965, was made by section 33, the provisions of which were held to be violative of article 14, to depend on the pendency on that date of any dispute regarding payment of bonus relating to any accounting year from 1962 onwards. The year 1962 had apparently no connection with the date on which the Act came into operation which was May 29, 1965.

It is well-settled that in fiscal enactments the Legislature has a larger discretion in the matter of classification so long as there is no departure from the rule that persons included in a class are not singled out for special treatment. It is not possible to say that while applying the penalty provisions contained in the Act of 1961 to cases of persons whose assessments are completed after April 1, 1962, any class has been singled out for special treatment. It is obvious that for the imposition of penalty it is not the assessment year or the date of the filing of the return which is important but it is the satisfaction of the Income Tax authorities

that a default has been committed by the assessee which would attract the provisions relating to penalty. Whatever the stage at which the satisfaction is reached, the scheme of sections 274(1) and 275 of the Act of 1961 is that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for purposes of penalty, is the date of such completion."

In our opinion, the aforementioned observations of the Supreme Court have no relevance at all with regard to the interpretation of section 271(1)(c) of the Income Tax Act. In the aforementioned case, the Supreme Court was considering a matter relating to the assessment year 1962-63, i.e., prior to the coming into force of the Income Tax Act, 1961. The Supreme Court while considering the repeal and savings clause as contained in section 297(2)(g) of the Act made the aforementioned observations. It is now well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is, therefore, clear that Jain Bros. and Others Vs. The Union of India (UOI) and Others, is not an authority for the proposition of interpretation of the provisions contained in section 271(1)(a), vis-a-vis, section 271(1)(c) of the Income Tax Act, 1961.

Further, as noticed hereinbefore, in Commissioner of Income Tax, Lucknow Vs. M/s. Onkar Saran and Sons, , the point at issue has specifically been dealt with and this court is bound by the said decision.

For the reasons aforementioned, the Tribunal was justified in law in passing its order as contained in annexure "2" to the application for reference. The question posed therefore is answered in favour of the assessee and against the Revenue.

However, in view of the fact that nobody has appeared on behalf of the assessee, there will be no order as to costs.

Let a copy of this order be sent to the Income Tax Appellate Tribunal Patna Bench.

S. N. JHA J. - I agree.

AFTAB ALAM J. - I agree.