(2002) 01 RAJ CK 0120

In the Rajasthan High Court

Case No : Income Tax Reference Application No. 68 of 1985

Commissioner of Income Tax — APPELLANT

Vs

Sonu Vyas — RESPONDENT

Date of Decision : 30-01-2002

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

Citation : (2002) 256 ITR 111

Hon'ble Judges : Y.R. Meena, J;A.C. Goyal, J

Bench : Division Bench

Advocate : Anroop Singhi, for the Appellant; N.M. Ranka and R.K. Yadav, for the Respondent

Judgement

On an application u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty order passed u/s 271(1)(c) holding that the Inspecting Assistant Commissioner had no jurisdiction to levy the said penalty on March 20, 1978 ?"

The relevant assessment year is 1972-73. The assessment was completed on February 10, 1976, on total income of Rs. 87,424 as against returned income of Rs. 35,214. The Income Tax Officer has initiated the penalty proceedings u/s 271(1)(c) on the same day, viz., February 10, 1976. As the minimum penalty leviable exceeded Rs. 25,000, the matter was referred to the concerned Inspecting Assistant Commissioner before April 1, 1976. Sub-section (2) of Section 274 has been omitted with effect from April 1, 1976. Thereafter the Inspecting Assistant Commissioner has no jurisdiction to levy the penalty but in the case in hand the facts are that penalty proceedings were initiated before April 1, 1976.

The same issue has been considered by the apex court in the case of

Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma, , their Lordships have observed (page 675) :

"We are, therefore, of the view that the Inspecting Assistant Commissioner did not lose the jurisdiction to continue with the proceedings pending before him on March 31, 1976, by virtue of the deletion of Sub-section (2) of Section 274 by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976. He was entitled to continue with those proceedings and pass appropriate orders according to law."

Following the view taken by their Lordships, we are of the opinion that the Tribunal has erred in holding that the Inspecting Assistant Commissioner has no jurisdiction to levy the penalty on March 20, 1978, after deletion of Sub-section (2) of Section 274 of the Act of 1961. Their Lordships held that if the penalty proceedings are initiated before the amendment the Inspecting Assistant Commissioner can pass the penalty order even after the amendment.

In the result, we answer the question in the negative, that is, in favour of the Revenue and against the assessee.