(1976) 04 OHC CK 0011

In the Orissa High Court

Case No : S.J.C. No. 188 of 1974

Commissioner of Income Tax	APPELLANT
Vs	
Soubhagya Manjari Devi	RESPONDENT

Date of Decision : 05-04-1976

Acts Referred:
Income Tax Act, 1961 — Section 275

Citation : (1976) 105 ITR 82

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : A. Agarwalla, for the Respondent

Judgement

R.N. Misra, J.—This is a reference made u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Cuttack Bench, at the instance of the revenue and the following question has been referred for the opinion of the court:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in cancelling the levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961, as barred by limitation by holding that the amendment to Section 275 of the Act (substituted by Act 42 of 1970) being operative from April 1, 1971, does not extend the period of limitation in respect of penalty proceedings initiated on October 21, 1970, pending for disposal as on April 1, 1971 ?"

2. Assessee is an individual and the relevant assessment year is 1968-69. Return for the year was filed on November 12, 1968, disclosing income of Rs. 11,570 but assessment was completed on a total income of Rs. 28,894 on 20th of October, 1970. A proceeding for imposition of penalty u/s 271(1)(c) of the Act was initiated by the Income Tax Officer, but as minimum penalty of more than Rs. 1,000 was exigible, the Income Tax Officer referred the matter to the Inspecting Assistant Commissioner at Sambalpur. By order dated 30th of March, 1972, the Inspecting Assistant Commissioner imposed penalty of Rs. 13,000.

3. Assessee appealed before the Appellate Tribunal and the appeal came to be disposed of by a learned single Member who held:

"The assessee''s counsel submits before me that the assessment order was made by the Income Tax Officer on October 20, 1970, whereas the Inspecting Assistant Commissioner passed the penalty order on March 3, 1973, which should have been disposed of before the expiry of two years as provided in the amended Section 275 of the Act which is relevant for the assessment year as the initiation of the proceedings by the Income Tax Officer was before April 1, 1971--the date when the amended Section 275 of the Act came into force. Alternatively, it is also contended that assuming that the Inspecting Assistant Commissioner has ample authority to impose the penalty by virtue of the extension of the period of limitation by the amendment effective from April 1, 1971, the quantum of concealment being less than Rs. 25,000, the minimum prescribed for the Inspecting Assistant Commissioner to assume jurisdiction irt penalty proceedings, the present penalty order is invalid.

A similar contention had been raised in a series of appeals before me and I have decided that on both the counts the Inspecting Assistant Commissioner had travelled beyond his competence while imposing the penalty. The assessee''s right is affected which has been guaranteed by the unamend-ed Section 275 of the Act and no retrospective effect has been provided by the amendment of April 1, 1971. I, therefore, hold that the penalty imposed by the Inspecting Assistant Commissioner is unsustainable in law. The levy of penalty is cancelled."

4. So far as the question referred to us is concerned, there is a direct decision of this court supporting the stand of the revenue in the case of Commissioner of Income Tax Vs. Bhikari Charan Panda, After noticing the amendment of Section 275 brought about by the Taxation Laws (Amendment) Act of 1970, with effect from April 1, 1971, this court observed :

"Admittedly, if the new provision applies, the levy of penalty does not suffer from the bar of limitation. The sole question for consideration is as to whether the new provision applies or the matter had to be disposed of under the unamended law. We do not agree with the conclusion of the Tribunal. When the amending Act came into force, i.e., April 1, 1971, the two year period provided u/s 275 of the unamended Act had not expired. At that stage the new provision with effect from 1st April, 1971, introduced a new scheme of limitation. No right had accrued to the assessee when the law was changed. Therefore, the law as in force on the date when the order is made must be applicable. We have not been shown any decision contrary to such a view. On the other hand, Mr. Mohanty has accepted the analysis placed by us at the time of hearing that the real position is so. We would accordingly hold without feeling the need of referring to any authority to support our conclusion that the order of penalty does not suffer from the infirmity of limitation."

5. Mr. Agarwalla for the assessee, however, says that there are authorities

supporting the stand of the assessee and we should consider the same. He relies upon two decisions of the Madras High Court in Commissioner of Gift-tax Vs. C. Muthukumaraswamy Mudaliar, and Continental Commercial Corporation Vs. Income Tax Officer and Another, a decision of the Punjab and Haryana High Court in Commissioner of Income Tax Vs. Bhan Singh Boota Singh, a decision of the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Ramchand Kundanlal Saraf, and a decision of the Allahabad High Court in Commissioner of Income Tax Vs. Data Ram Satpal, Some of these decisions do take a view which would support Mr. Agarwalla''s contention, while the other cases are liable to be distinguished on the basis that they are concerned with the quantum of penalty.

6. The question of limitation has two aspects : (i) regarding the period during which penalty can be imposed and this in our view is wholly procedural, and (ii) regarding the quantum of penalty in view of the fact that the quantum has been enhanced by amendment which is a substantive matter. So far as the substantive aspect of it is concerned, there is no question of retrospective application while in regard to the procedural aspect the law is clear and pending proceedings are governed by the new law. This aspect of the matter has been dealt with by a Bench of this court in the case of Commissioner of Income Tax v. Dhadi Sahu [1976] 105 ITR 55 and several authorities have been noticed in the said decision.

7. The decision of the Allahabad High Court relied upon by Mr. Agar-walla is directly contrary to a Bench decision of this court in the case of Commissioner of Income Tax Vs. K.C. Behera and Others, . We do not, therefore, think there is force in the contention of learned counsel for the assessee and our answer to the question referred to us must be against the assessee. We would hold :

8. On the facts and in the circumstances of the case, the Appellate Tribunal was not justified in cancelling the levy of penalty u/s 271(1)(c) of the Income Tax Act of 1961 as being barred by limitation. The reasonings of the Appellate Tribunal while cancelling the penalty showed that it was also based upon lack of jurisdiction of the Inspecting Assistant Commissioner to impose penalty. The decision of this court in Dhadi Sahu''s case has application and, we think, it is appropriate that we invite the attention of the Appellate Tribunal to the decision of this court, so that while disposing of the matter no injustice may be done to parties. We make no order as to costs.

N.K. Das, J.

9. I agree.