(1996) 01 AHC CK 0093

In the Allahabad High Court

Case No : Income-tax Reference No. 323 of 1981

Commissioner of Income Tax APPELLANT

Vs

Surendra Mohan Seth RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 274

Citation : (1996) 219 ITR 88

Hon'ble Judges : Om Prakash, J;M. Katju, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Income Tax Appellate Tribunal (Allahabad Bench) referred the following question to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that the Inspecting Assistant Commissioner had no jurisdiction to impose the penalty u/s 271(1)(c) on or after April 1, 1976, and in that view cancelling the penalty u/s 271(1)(c) imposed by the Inspecting Assistant Commissioner after March 31, 1976 ?"

2. The only question for consideration is whether the Inspecting Assistant Commissioner was competent to levy penalty u/s 271(1)(c) on or after April 1, 1976, when the Taxation Laws (Amendment) Act, 1975, became operative.

3. In Commissioner of Income Tax, Orissa Vs. Dhadi Sahu, , the Supreme Court held that if the reference made before April 1, 1976, remained pending thereafter before the Inspecting Assistant Commissioner that should not be returned without any final order on the ground of lack of jurisdiction. If the Inspecting Assistant Commissioner was authorised to levy penalty on the date of reference made before the enforcement of the amendment, then he will continue to be authorised to levy penalty.

4. In the instant case, we do not find from the record as to when the reference was made to the Inspecting Assistant Commissioner and, therefore, it cannot be said whether on the date of making the reference, the Inspecting Assistant Commissioner was authorised to levy penalty or not. Therefore, we have no option but to send the case back to the Appellate Tribunal to record a clear finding as to when the reference was made to the Inspecting Assistant Commissioner in this case.

5. If the reference was made before April 1, 1976, when the Taxation Laws (Amendment) Act, 1975, came into force, then the Inspecting Assistant Commissioner would be competent to levy penalty even after April 1, 1976.

6. With these observations, we remand the case to the Appellate Tribunal who will record a clear finding as to when the reference was made to the Inspecting Assistant Commissioner and then proceed in the light of Commissioner of Income Tax, Orissa Vs. Dhadi Sahu, to pass a fresh order after giving an opportunity of being heard to both the parties.