

(1982) 07 CAL CK 0043

In the Calcutta High Court

Case No : Income-tax Reference No. 103 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Surinder Singh Atwal

RESPONDENT

Date of Decision : 20-07-1982

Acts Referred:

Income Tax Act, 1922 — Section 18A, 18A(3)

Income Tax Act, 1961 — Section 154, 155, 212, 273

Citation : (1983) 33 CTR 175 : (1984) 146 ITR 272 : (1983) 14 TAXMAN 154

Hon'ble Judges : Suhas Chandra Sen, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : B.K. Bagchi and S.C. Chakraborty, for the Appellant; D. Pal and R.M. Dutta, for the Respondent

Judgement

Suhas Chandra Sen, J.—Two questions of law have been referred by the Tribunal u/s 256(1) of the I.T. Act, 1961, to this court for an answer:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that the proceedings u/s 155 of the Income Tax Act, 1961, for the amendment of the assessment order passed in the case of the assessee was not a proceeding in connection with the regular assessment within the meaning of Section 273 of the Income Tax Act, 1961, and in that view holding that the proceedings under Section 273 of the said Act had not been validly initiated ?

2. If the answer to question No. 1 is in the affirmative, whether, on the facts and in the circumstances of the case, the penalty u/s 273(b) of the Income Tax Act, 1961, could be imposed on the assessee ?"

2. The respondent (hereinafter referred to as "the assessee") is an individual. The assessment year is 1958-59 and the relevant accounting year is the financial year ended on 31st March, 1958. In the accounting year relevant to the assessment year under reference the assessee was a partner of M/s. G. S. Atwal

& Co. (Asansol), Contractors. Apart from share of income from the said firm, the assessee had income from his independent contract business.

3. The original assessment for the year under reference was completed on September 29, 1962, on a loss of Rs. 13,485, comprising of income from contract business at Rs. 9,000 and share of loss from the said firm as per allocation at Rs. 22,485. Subsequently, the assessment of the said firm was revised as the original assessment was set aside in appeal by the AAC. On the fresh assessment realised on the said firm, the assessee's share of income from it amounted to Rs. 3,83,598. This led the ITO to revise the assessee's assessment for the year under reference in accordance with the provisions of Section 155 read with Section 154 of the 1961 Act. This order was passed on August 12, 1968.

4. Finding that the assessee failed to file an estimate of his income and to pay advance tax u/s 18A(3) of the 1922 Act, the ITO initiated the penalty proceedings u/s 273(b) of the 1961 Act. It was contended before the ITO, on behalf of the assessee, that no notice as provided u/s 274(1) of the 1961 Act was issued on the assessee. The ITO, however, found that the notice u/s 273 was issued to the assessee on August 12, 1968, and was duly served on him by registered post acknowledgment due on September 9, 1968. The assessee further contended that neither in the original assessment order nor in the revised order was there any finding that the ITO was satisfied about the assessee's committing a default u/s 212 of the 1961 Act (corresponding to Section 18A(3) of the 1922 Act). The ITO held as the original assessment resulted in no demand due to assessee's share of loss from the said firm, no finding could be given at that stage. Further, he was of the opinion that only after the revision of the assessment made on August 12, 1968, that the action u/s 273 of the 1961 Act was called for and that fact was recorded in the order sheet dated August 12, 1968. Lastly, the assessee contended that in view of the provision of Section 275 of the 1961 Act, the ITO had no jurisdiction to proceed with the case when the penalty proceedings was not commenced in the course of the assessment proceedings. This too was rejected by the ITO as, according to him, penalty proceeding was initiated before the finalisation of the rectification order. In this view of the matter, the ITO imposed a penalty of Rs. 22,000 u/s 273(b) of the 1961 Act.

5. The assessee's appeal against the order passed by the ITO was dismissed by the AAC. Thereupon, the assessee preferred further appeal to the Tribunal. The Tribunal, after considering the rival submissions of the parties, cancelled the penalty order made u/s 273(b) of the 1961 Act. The Tribunal held that, in the facts of this case, the penalty could not be imposed. The Tribunal observed as follows:

"Even on merits, we do not find any scope for the imposition of penalty in view of the order of the Tribunal referred to above and though we are told in the course of the hearing, by the assessee's counsel that the money disclosed was put later

on in the accounts, we hold that the assessee being new to the business and tender in age he had reasonable cause for not furnishing the estimate u/s 18A(3) of the 1922 Act, as his father, the senior partner, had overall control of the firm's business. Thus, there was no conscious disregard to the statutory obligations on the part of the assessee."

6. The Tribunal also held that the provisions of Section 273 limited the ITO's power to initiate proceedings u/s 273 only in the course of the regular assessment proceedings and, hence, the AAC was wrong in holding that the penalty proceeding was legal.

7. The case against the assessee is that the assessee has failed to furnish an estimate of advance tax without any reasonable cause. The Tribunal has held that the assessee being new to the business and tender in age, had reasonable cause for not furnishing the estimate u/s 18A(3) of the (922 Act. This finding of the Tribunal has not been challenged.

8. In view of the finding of fact made by the Tribunal, it must be held that an order of penalty could not be lawfully passed against the assessee in this case.

9. Therefore, in our opinion, the first question has really become academic. We reframe the second question as follows :

"Whether, on the facts and in the circumstances of the case, the penalty u/s 273(b) of the Income Tax Act, 1961, could be imposed on the assessee ?"

10. The question, in our opinion, brings out the real controversy between the parties in the case. In view of the finding of fact made by the Tribunal that the assessee had reasonable cause for not furnishing the estimate u/s 18A of the 1922 Act, we answer the reframed question in the negative and in favour of the assessee. The first question raised by the Commissioner has become academic and we decline to answer that question.

11. The parties will pay and bear their own costs.

Sabyasachi Mukharji, J.

12. I agree.