(1984) 01 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 141 of 1981

Dashrath Prasad Dube APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 09-01-1984

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 274(2)

Citation : (1984) 40 CTR 360 : (1986) 159 ITR 147

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : J.W. Mahajan, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, J.—By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the order of the Inspecting Assistant Commissioner of Income Tax imposing a penalty u/s 271(1)(c) of the Income Tax Act, 1961, was not bad in law for want of jurisdiction ?"

2. The material facts giving rise to this reference, briefly, are as follows :

The assessee is assessed in the status of an individual. While framing the assessment for the assessment year 1973-74, the Income Tax Officer made certain additions to the income disclosed by the assessee in his return. For concealment of income, the Income Tax Officer initiated penalty proceedings u/s 271(1)(c) of the Act and referred the matter to the Inspecting Assistant Commissioner u/s 274(2) of the Act, who passed an order on March 20, 1978, imposing a penalty of Rs. 30,000 on the assessee. Aggrieved by that order, the assessee preferred an appeal before the Tribunal. It was urged before the Tribunal that when the Inspecting Assistant Commissioner passed the order imposing penalty, the Inspecting Assistant Commissioner had no jurisdiction to impose penalty, in view of the fact that subjection (2) of Section 274 of the Act, in pursuance of which the Income Tax Officer was required to refer the matter for imposition of penalty to the Inspecting Assistant Commissioner, was deleted by the Taxation Laws (Amendment) Act, 1975, with with effect from April 1, 1976. This contention was rejected by the Tribunal and on merits, the Tribunal upheld the levy of penalty to the extent of Rs. 6,000 only. Aggrieved by the order of the Tribunal, the assessee sought a reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this court for its opinion.

3. When this reference came up for consideration before this court, by an order dated February 1, 1983 (p. 149 infra), passed by this court, the Tribunal was directed to send a supplementary statement of the case and to state the date, on which the matter regarding imposition of penalty was referred by the Income Tax Officer to the Inspecting Assistant Commissioner. In pursuance of that order, a supplementry statement of the case has been received and it has been found by the Tribunal that the Income Tax Officer had referred the matter regarding imposition of penalty to the Inspecting Assistant Commissioner on January 4, 1978. It is in the light of this additional fact that we have to answer the question referred to this court :

By the Taxation Laws (Amendment) Act, 1975, which came into force from April 1, 1976, the provisions of Section 274(2) of the Act were deleted. While considering similar provisions under the Wealth-tax Act, 1957, a Division Bench of this court has held in Bankatlal Tody Vs. Commissioner of Wealth-tax, , that the jurisdiction of the Inspecting Assistant Commissioner for the purpose of imposing penalty arises on a reference made to him and if the reference was not validly made, then it follows that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty. In the instant case, the reference was made by the Income Tax Officer on January 4, 1978, when the provisions of Section 274(2) of the Act requiring the Income Tax Officer to refer the case to the Inspecting Assistant Commissioner were deleted. Therefore, in our opinion, on the facts and in the circumstances of the case, it must be held that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty. Our answer to the question referred to this court is in the negative and against the Revenue. In the circumstances of the case; parties shall bear their own costs of this reference.

