
(1980) 02 AHC CK 0074

In the Allahabad High Court

Case No : Income-tax Reference No. 1137 of 1976

Gupta Rice Mills

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-02-1980

Acts Referred:

Income Tax Act, 1961 — Section 274, 275

Citation : (1980) 16 CTR 147 : (1980) 123 ITR 825 : (1980) 3 TAXMAN 584

Hon'ble Judges : Satish Chandra, C.J.;H.N. Seth, J

Bench : Division Bench

Advocate : S.P. Mehrotra, for the Appellant; R.K. Gulati and A. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, C.J.—For the assessment year 1970-71, the assessee filed his return on 26th February, 1971, showing an income of Rs. 1,20,992. The ITO, by an order dated 1st of March, 1972, completed the assessment at an income of Rs. 1,61,180. The ITO, finding that the quantum of concealed income exceeded Rs. 25,000, referred the matter to the IAC for drawing up penalty proceedings. The IAC called upon the assessee, heard him and held that the concealed income was Rs. 8,657 and so he levied a penalty of Rs. 9,000 by an order dated 4th of March, 1974.

2. Aggrieved, the assessee went up to the Tribunal in appeal. The Tribunal upheld the finding that there was concealment. It repelled the explanation furnished by the assessee. It further held that the IAC had jurisdiction to pass the order that he did even though the concealed income was held by him to be below Rs. 25,000. It repelled the submission of the assessee that the penalty order was barred by limitation. It was held that the amendments effected in Section 275 of the I. T. Act by the Amending Act of 1971 which came into force on 1st April, 1971, was retrospective and was applicable to the present proceedings. The assessee's appeal was dismissed.

3. At the instance of the assessee, the Tribunal has referred the following questions of law for our opinion :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the IAC had jurisdiction to levy penalty even though he found that the amount of concealed income, which had been determined at more than Rs. 25,000 by the Income Tax Officer, was less than Rs. 25,000 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the provisions of Section 275 as amended with effect from April 1, 1971, would be applicable to the case even though the return for this year had been filed before April 1, 1971 ? "

4. On the first question, there is a direct decision of our High Court in CIT v. India Hotel [see p. 828 (infra) (Appendix) J. In that case, finding that the minimum penalty imposable being over Rs. 1,000, the ITO referred the matter to the IAC. The IAC passed an order imposing a penalty of Rs. "1,000. Meanwhile the assessment order was subjected to an appeal and the quantum of concealed income was reduced. When the matter went up to the Tribunal, it held that since the quantum of concealed income was less than Rs. 1,000 the ITO alone had jurisdiction and the IAC lost jurisdiction. The matter came to this court. This court held that once the reference was made the IAC became seized of the matter and acquired all the jurisdiction to deal with the question of penalty which could be imposed on the assessee. If at the time of making the reference the ITO found that the minimum penalty imposable exceeded Rs. 1,000 he could refer the matter to the IAC. Any subsequent factual change would not affect his jurisdiction. This authority is applicable to the present case. The ITO found that the concealed income was more than Rs. 25,000 and penalty proceedings, in such circumstances, be taken by the IAC. Consequently, he referred the matter to him. The fact that after hearing the assessee the IAC came to the conclusion that the concealed income was less than Rs. 25,000 would not affect his jurisdiction to impose appropriate penalty. The decision cited by the learned counsel for the assessee in Commissioner of Income Tax Vs. Om Sons, is distinguishable. In that case, the law was changed which affected the jurisdiction of the authorities. This court held that a court or Tribunal deciding a matter must not only be possessed of jurisdiction initially but must also be clothed with the power to decide the matter when the final order is made by reason of change of law. The jurisdiction changed and on that account this court held that if the authority finds that at the time of passing of the order it had no jurisdiction in the eye of law it could not validly pass the order. In the present case, the law did not change. The ITO was of the view that the concealed income was over Rs. 25,000. While exercising the jurisdiction of initiating penalty proceedings the IAC came to the conclusion that the quantum of concealed income was less than Rs, 25,000. He could not in law lose the jurisdiction over the matter. The Commissioner continued to retain jurisdiction. He was only obliged to impose penalty commensurate with the finding as to the quantum of the concealed

income. The decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Khetshibhai Madhani, is clearly distinguishable. There the ITO committed an error in computation. It was held that such an error could not invest him with jurisdiction. The facts of our case are entirely different.

5. Coming to the second question, the position is that this court in Hargu Charan Srivastava Vs. Commissioner of Income Tax, , has held that Section 275 of the I.T. Act, 1961, which laid down the period of limitation of two years commencing from the date of the assessment order for initiating penalty proceedings was amended by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, enlarging the period of limitation to two years commencing from the end of the financial year in which the assessment order was passed. It was held that the prescription of the period of limitation being a matter of procedure, any amendment in this regard will be retrospective in the sense that it will apply to all those matters which are pending and which had not become closed or dead on the date the amendment takes effect. The assessment order was passed on 1st of March, 1972. It will be the amended provision of Section 275 which will apply. The filing of the return on 26th of February, 1971, was immaterial.

6. In the result, we answer the first question in the affirmative, in favour of the department and against the assessee and the second question in the affirmative, in favour of the department and against the assessee. The Commissioner will be entitled to costs which are assessed at Rs. 200.