

(1979) 11 MP CK 0027
In the Madhya Pradesh High Court
Case No : M.C.C. No. 258 of 1974

Kaushal Construction Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 27-11-1979

Acts Referred:

Income Tax Act, 1961 — Section 147, 152, 271(1), 271(2)

Citation : (1980) 126 ITR 466 : (1980) JLJ 230

Hon'ble Judges : G.P. Singh, C.J.; R.C. Shrivastava, J

Bench : Division Bench

Advocate : S.C. Daharwal, D.C. Bhamore and O.P. Namdeo, for the Appellant;
P.S. Khirwadkar, for the Respondent

Judgement

G.P. Singh, C.J.—This is a reference made by the Income Tax Appellate Tribunal at the instance of the assessee referring for our answer the following question of law ;

"Whether, on the facts and in the circumstances of the case, for the purpose of determining the amount of penalty u/s 271(2), the tax payable by the firm in relation to which the penalty is calculated should be reduced by the amount of tax which would be payable by the firm on the total income determined in the original assessment on the footing that registration is not granted at the stage of the original assessment ?"

2. The relevant assessment year is 1959-60. The assessee is a registered firm. The assessee was originally assessed on 22nd November, 1961. The total income determined was Rs. 2,17,881. Proceedings were taken for reassessment u/s 147 of the I T. Act, 1961. A notice was issued to the assessee on 31st January, 1967. In pursuance of this notice, the return was due on 7th March, 1967. The return was, however, filed on 1st February, 1968, after a delay of ten complete months. The order of reassessment was passed on 20th March, 1968. By this order the total income determined was Rs. 3,03,967. Thus, the excess income that was brought under tax by the order of reassessment was Rs. 86,086. Penalty

proceeding were taken against the assessee u/s 271(1)(a) of the Act for default in filing the return u/s 148. The amount of penalty has been fixed at the rate of 2 per cent. of the tax which would be payable on the total income of Rs. 3,03,967 for each month of default.

3. For purposes of imposition of penalty u/s 271(1)(a) a registered firm is to be treated as an unregistered firm as is provided in Section 271(2). The argument on behalf of the assessee is that the words "assessed tax" as they occur in Section 271(1)(a)(i) should be interpreted to mean 2 per cent. of the tax which would have escaped assessment but for the reassessment u/s 147. We are unable to accept this argument. The assessment of tax involves various steps. One of the steps is quantification of total income. The other step which may be called the final step, is the quantification of tax. u/s 147, the ITO assesses or reassesses such income as had escaped assessment. Now, in those cases where there is an earlier assessment, "such income" u/s 147 would be that income which is not included in the earlier assessment. The computation of tax then has to be done u/s 152. The computation of tax under this section is not limited to the income which was not included in the original assessment. When the escaped income is assessed u/s 147, it has to be added to the income, if any, which was earlier assessed for finding out, the tax which the assessee is liable to pay for the particular assessment year. In the case of reassessment following an assessment, the quantification of tax cannot be simply on the income which is found to have escaped assessment for the simple reason that the escaped income has to be added to the income earlier determined for finding out the total tax liability, as the rate of tax is affected by the increase in the total income. So at the stage of assessment of tax, even in cases u/s 147, the tax is assessed not only on the income that has escaped assessment but on the total income. Out of the tax so assessed any tax that had already been paid would be deducted and the tax payable "would be the tax assessed minus the tax already paid. But the assessed tax even in cases of reassessment would be that tax which is assessed on the total income including the income that had escaped assessment. This is also clear from the Explanation which says that assessed tax means the tax as reduced by the sum, if any, deducted at source under Chap. XVII-B or paid in advance under Chap. XVII-C. If the intention of the law-makers was that assessed tax should mean the difference between the tax assessed at the stage of reassessment and the tax originally assessed, the Explanation would have said so.

4. Learned counsel for the assessee referred us to the decision of the Supreme Court in *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd.*, which is an authority on the construction of the words "amount of tax, if any, payable" as they occurred in Section 271(1)(a)(i) as it then stood. It was held in that case that the tax payable is not the same thing as tax assessed and that the tax payable is that amount for which demand notice is issued u/s 156. In fact, it was this ruling that led to the amendment of Section 271(1)(a)(i) by the Direct Taxes (Amendment) Act, 1974, with retrospective

effect in the present shape.

5. For the reasons given above, the question referred to us is answered in the negative, in favour of the department and against the assessee. There will be no order as to costs of this reference.