**(1985) 09 CAL CK 0011**

**In the Calcutta High Court**

**Case No :** A.F.O.O. No. 429 of 1976

Oriental Rubber Works APPELLANT

Vs

Income Tax Officer and Others RESPONDENT

**Date of Decision :** 25-09-1985

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

**Citation :** (1987) 65 CTR 274 : (1987) 166 ITR 387 : (1987) 33 TAXMAN 38

**Hon'ble Judges :** G.N. Ray, J;Dipak Kumar Sen, J

**Bench :** Division Bench

**Advocate :** Sanjoy Bhattacharya, for the Appellant; A.C. Moitra, for the Respondent

## Judgement

Dipak Kumar Sen, J.—M/s Oriental Rubber Works, the assessee, filed its return of income for the assessment year 1961-62, on or about September 19, 1962. On or about February 19, 1965, the Income Tax authorities searched the office and factory premises of the assessee and seized certain books and documents under the provisions of the Income Tax Act.

2. By an order dated March 25, 1966, the Income Tax Officer, "F" Ward, District IV(3), Calcutta, assessed the income of the assessee for the said assessment year u/s 43 of the Income Tax Act, 1961, computing the total taxable income at Rs. 10,86,483.

3. The Income Tax Officer also found that the assessee had concealed its income and issued a notice u/s 274 read with Section 271 of the income tax Act, 1961, as follows:

Dated: March 24, 1966.

"M/s. Oriental Rubber Works,

171A, Mahatma Gandhi Road, Calcutta.

Whereas in the course of proceedings before me for the assessment year

 

1961-62, it appears to me that you have concealed the particulars of your income or deliberately furnished inaccurate particulars of such income and whereas the penalty proceedings have to be referred to the Inspecting Assistant Commissioner of Income Tax, according to Sub-section (2) of Section 274 of the Income Tax Act, 1961, you are hereby informed that the case for levy of a penalty under Clause (c) of Sub-section (1) of Section 271 is being referred by me to the Inspecting Assistant Commissioner of Income Tax, Range XIV, Calcutta. Further proceedings in regard to the levy of penalty will take place before the said Inspecting Assistant Commissioner of Income Tax as provided in Sub-section (2) of Section 274.

(Sd.)(S.B. Ghosh)

I.T.O., ''F'' Ward, District IV(3)

Calcutta.

Dated: 13-4-1967.

No. IV(3)/306-O/F.

Forwarded to the Inspecting Assistant Commissioner, Range XIV, Calcutta, for information and necessary action. Necessary particulars are given in a separate sheet."

4. Some time, in November, 1967, the Income Tax file and records of the assessee were transferred from the Income Tax Officer, ''F'' Ward, District IV(3), to the Income Tax Officer, Special Circle VII, District IV(2).

5. The Inspecting Assistant Commissioner of Income Tax, Range XVII, Calcutta, thereafter, issued a notice u/s 274 read with Section 271 of the Income Tax Act, 1961, dated February 28/29, 1968, to the assessee as follows:

"Whereas the Income Tax Officer, Spl. Circle-VII, Calcutta, has, under Sub-section (2) of Section 274 of the Income Tax Act, 1961, referred your case to me in connection with the penalty proceedings under Clause (c) of Sub-section (1) of Section 271 and whereas it appears to me that you have concealed the particulars of your income or deliberately furnished inaccurate particulars of such income for the assessment year 1961-62 ;

You are hereby requested to appear before me at 1.15 p.m. on March 5, 1968, and show cause why an order imposing a penalty on you should not be made u/s 271(1)(c) of the said Act. If you do not wish to avail yourself of this opportunity of being heard, in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made u/s 271(1)(c)."

6. On March 27, 1968, the Inspecting Assistant Commissioner of Income Tax, Range XVII, Calcutta, passed an order u/s 274(2) read with Section 271(1)(c)(iii) of the Income Tax Act, 1961, imposing on the assessee a penalty of Rs.

 

7,97,654. It was recorded in the said order that the Income Tax Officer concerned had issued a notice u/s 274 read with, Section 271(1)(c) to the assessee on March 24, 1966, and that the order of assessment was passed on March 28, 1966. It was held by the Inspecting Assistant Commissioner that the penalty proceeding had been initiated in a valid manner.

7. The assessee moved an application under Article 226 of the Constitution on August 14, 1968, challenging the said order of penalty dated March 27, 1968, as illegal, invalid and void. A rule nisi was issued on the same day, i.e., August 14, 1968.

8. By a judgment and order dated September 22, 1976, the rule was discharged and the application was dismissed. This appeal has been preferred by the assessee against the said judgment and order dated September 22, 1976.

9. At the hearing of this appeal, the learned advocate for the assessee, the appellant, submitted that the assessment had been completed and the assessment order had been passed by the Income Tax Officer, "F" Ward, District IV(3J, Calcutta, but for imposition of penalty, the Income Tax Officer, Special Circle VII, Calcutta, referred the matter to the Inspecting Assistant Commissioner as recorded in the notice dated February 28/29, 1968, issued by the Inspecting Assistant Commissioner of Income Tax, Range XVII, Calcutta. This notice has been set out earlier.

10. It was contended that the authority competent to initiate the penalty proceedings was the Income Tax Officer who during the course of assessment had to be satisfied that there had been concealment or escapement of income. The Income Tax Officer, Special Circle VII, Calcutta, had nothing to do with the order of assessment and the initiation of penalty proceedings by him by referring the matter to the Inspecting Assistant Commissioner was illegal and void. The penalty imposed on the assessee was also void in consequence. In support of his contentions, the learned advocate for the assessee cited several decisions of this court and that of the Supreme Court.

11. On an examination of the original records of the proceeding which were called for and produced at the hearing, we are unable to accept the contention of the assessee.

12. It is clear that the Income Tax Officer, "F" Ward, District IV(3), Calcutta, during the assessment came to the conclusion that the assessee had concealed the particulars of its income and on March 24, 1966, before the assessment was completed, he issued a notice to the assessee and forwarded the same to the Inspecting Assistant Commissioner, Range IV(3), Calcutta, for necessary action. This notice is on record and has been set out earlier.

13. The assessee duly received this notice as appears from an acknowledgment signed by the assessee which is also on record. The Inspecting Assistant Commissioner in his order imposing the penalty has particularly noted this notice

dated March 24, 1966.

14. In the notice dated February 28/29, 1968, the Inspecting Assistant Commissioner, Range XVII, Calcutta, has no doubt stated that the Income Tax Officer, Special Circle VII, has referred the matter for imposition of penalty. This obviously is incorrect. This by itself, in our view, cannot vitiate the entire penalty proceeding inasmuch as the initial reference by the Income Tax Officer, "F", Ward, District IV(3), Calcutta, was valid and lawful.

15. No other ground was pressed by the assessee in this appeal.

16. For the above reasons, we see no reason to interfere with the judgment and order under appeal. The appeal is dismissed without any order as to costs.

17. The learned advocate for the assessee drew our attention to an interim order passed in this appeal in compliance whereof the entire amount of penalty had been paid by the assessee in instalments. A direction on the Income Tax Officer for remission of interest for the delay in payment was sought as Section 220(2A) of the Income Tax Act, 1961, empowers the Central Board of Direct Taxes to reduce or waive the interest leviable. We make it clear that this judgment will not prevent the assessee from applying for reduction or waiver of interest as it may be advised.

G.N. Ray, J.

18. I agree.

 