

(1978) 05 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1073 of 1976

Pawan Kumar More

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 08-05-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 256(2), 271(1), 274(2)

Citation : (1979) 118 ITR 1012

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : B.K. Mohanti, B.P. Chandgotia, K.N. Jena and P.N. Misra, for the Appellant; A.B. Misra, for the Respondent

Judgement

R.N. Misra, J.—Petitioner, an assessee, under the I.T. Act of 1961 (hereinafter referred to as " the Act"), assails the imposition of penalty of Rs. 10,000 on him u/s 271(1)(c) read with Section 274(2) of the Act by the IAC of Income Tax, opposite party No. 2, for the assessment year 1968-69. Assessee holds a moiety share in a registered firm by name M/s. Capital Watch and Radio Emporium. For the assessment year 1968-69, the ITO found the assessee to have invested a sum of Rs. 22,000 in his capital account. He accepted the assessee's explanation to the extent of Rs. 12,000 and treated a sum of Rs. 10,000 as income from unexplained sources and directed initiation of penalty proceedings u/s 271(1)(c) of the Act by his order dated April 8, 1969. The records were transmitted to the IAC in terms of Section 274(2) of the Act. While the proceedings were pending, by the Taxation Laws (Amendment) Act of 1970, which came into force from April 1, 1971, the provision in Section 274(2) of the Act underwent an amendment. Prior to the amendment, Sub-section (2) of Section 274 read thus:

"Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax

Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

2. Upon amendment, the provision read thus :

"Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that sub-section, the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

3. Notwithstanding the amendment, the IAC by his order dated April 3, 1971, exercised jurisdiction and imposed a penalty of Rs. 10,000. Assessee appealed to the Income Tax Appellate Tribunal but the Tribunal sustained the imposition. Thereupon, the assessee asked the Tribunal to state a case and upon the Tribunal refusing to do so, the assessee moved this court u/s 256(2) of the Act. The said application was rejected by this court on November 28, 1973, upon a finding that no question of law arose out of the said application. It may be stated that at no stage it was argued on behalf of the assessee that the IAC had lost jurisdiction to deal with the penalty matter in view of the amendment with effect from April 1, 1971.

4. In the meantime, in the case of Commissioner of Income Tax Vs. Dhadi Sahu, , a Bench of this court came to hold (p. 62):

"If the Inspecting Assistant Commissioner had passed final orders prior to the Amending Act of 1970, there would have been no question of loss of jurisdiction, but as the matter was still pending and by change of procedure the references became incompetent, the Inspecting Assistant Commissioner had no jurisdiction to complete the proceedings, because he had no longer jurisdiction to deal with the matter of this type."

5. On the basis of the law indicated in the aforesaid decision, the assessee made an application purporting to be u/s 154 of the Act to the Appellate Tribunal. The Tribunal took the view that there was no error apparent on the face of the record and, accordingly, declined to interfere. Assessee has, therefore, come with this writ application asking for quashing of the imposition of penalty on the ground that the statutory authority had no jurisdiction to exercise or alternatively to issue a direction to the Tribunal to rectify the mistake.

6. On the ratio of the decision of this court in Commissioner of Income Tax Vs. Dhadi Sahu, , the imposition of penalty in the matter is admittedly without jurisdiction. Learned standing counsel has, however, contended that the penalty proceedings had become final several years back and it would not be appropriate

to allow the concluded matter to be reopened at this point of time. He again submits that the matter had once come before this court and the reference application u/s 256(2) of the Act had also been rejected. Merely because the effect of the law which has been declared in Commissioner of Income Tax Vs. Dhadi Sahu, is against the revenue, it would not mean that every matter where a different view had been taken and has become final should be permitted to be reopened. We find force in the objection of the learned standing counsel.

7. The decision of this court in Commissioner of Income Tax Vs. Dhadi Sahu, only interpreted the law which was then existing. It was open to the petitioner to raise the contention which was raised in Dhadi Sahu's case. But that contention not having been canvassed and the imposition of penalty having become final, we are not prepared to interfere in the matter at this stage. It is expedient that the matters which have become final should not be allowed to be reopened merely because an interpretation has been given to the statutory provision in a way different from the interpretation in the proceeding which has been finalised.

8. We would, accordingly, decline to interfere and reject this application. There shall, however, be no direction for costs.

N.K. Das, J.

9. I agree.