
(1998) 10 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.C.C. No. 105 of 1987

Prabhudayal Amichand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 30-10-1998

Acts Referred:

Income Tax Act, 1961 — Section 254, 263, 271(1)

Citation : (1999) 237 ITR 483 : (1999) 103 TAXMAN 276

Hon'ble Judges : A.K. Mathur, C.J.; B.A. Khan, J

Bench : Division Bench

Advocate : G.M. Chafekar and Samvatsar, for the Appellant; V.K. Jain, for the Respondent

Judgement

A.K. Mathur, C.J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, made by the Tribunal at the instance of the assessee and the following questions of law have been referred by the Tribunal for opinion of this court :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the order dated December 14, 1981, passed by the Income Tax Officer u/s 271(1)(c) of the Income Tax Act was not barred by the period of limitation prescribed under the Income Tax Act ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income Tax Officer had the jurisdiction to levy the penalty u/s 271(1)(c) of the Income Tax Act ?"

2. The brief facts giving rise to this reference are that the firm in its return for the assessment year 1972-73 claimed deduction of Rs. 1,36,000 representing interest credited to the account of Prabhudayal Surajbhan of Indore. It is an admitted fact that two of the four partners of the assessee-firm were partners of Prabhudayal Surajbhan. During the course of assessment proceedings, the Income Tax Officer (in short "ITO"), found that deduction of Rs. 1,36,000 was very excessive and, therefore, he called upon the assessee to furnish the basis of

the above deduction. The statements of one of the partners as well as that of the accountant of the firm were also recorded by the Income Tax Officer. On proper calculations, the Income Tax Officer held that only a sum of Rs. 56,132 should be allowed as a deduction and the balance was to be treated as income of the assessee. On further appeal, certain reliefs were allowed to the assessee and, ultimately, an addition of Rs. 68,638 was retained. After initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, the Income Tax Officer levied penalty under the above provisions vide order dated August 31, 1980, but the said order was set aside by the Commissioner of Income Tax u/s 263 of the Income Tax Act by his order dated September 1, 1981. The Commissioner of Income Tax as per the above order, directed the Income Tax Officer to pass a fresh order in accordance with law. The Income Tax Officer then passed a fresh order on December 14, 1981, levying penalty of Rs. 68,638 u/s 271(1)(c) of the Income Tax Act. Meanwhile the law was amended with effect from April 1, 1976, vesting the jurisdiction to the Income Tax Officer. It may also be relevant to mention here that the order of the Commissioner of Income Tax was also confirmed by the Tribunal by order dated December 20, 1982, in I. T. A. No. 921 of 1981.

3. Aggrieved against the said order of the Income Tax Officer, an appeal was preferred before the Commissioner of Income Tax (Appeals) challenging the order of imposition of penalty on various grounds ; viz., the order dated December 14, 1981, levying penalty was beyond the period of limitation prescribed under the Act and, secondly, as per the original assessment order dated March 22, 1975, the matter of imposing penalty was referred to the Inspecting Assistant Commissioner, who in accordance with the existing law, had the jurisdiction to levy penalty and, therefore, the order dated December 14, 1981, was without jurisdiction, and, thirdly, the assessee was neither guilty of concealment of income nor furnishing of any inaccurate particulars of income and as such no penalty can be levied.

4. The Commissioner of Income Tax rejected all the aforesaid grounds and upheld the penalty order ; therefore, the matter was taken up in appeal before the Tribunal. The Tribunal overruled all the objections raised by the assessee and held that the question of the order being barred by time, does not arise and it was ordered that the matter may be referred to the Inspecting Assistant Commissioner, but, in fact, no reference was made to the Inspecting Assistant Commissioner. Therefore, the Inspecting Assistant Commissioner, never assumed the jurisdiction nor issued a notice to the assessee. It is alleged that before the reference could be made, the law was changed and power of imposing the penalty was vested with the Income Tax Officer with effect from April 1, 1976, and thereafter, the order imposing penalty was passed on December 14, 1981, by the Income Tax Officer. As such the question of deciding the matter by the Inspecting Assistant Commissioner did not arise. The Income Tax Officer was fully competent to impose penalty. However, the order dated March 31, 1980, imposing penalty by the Income Tax Officer was revised and set aside by the

Commissioner of Income Tax u/s 263 of the Income Tax Act on September 1, 1981, with a specific direction to the Income Tax Officer to pass a fresh order with the approval of the Inspecting Assistant Commissioner after affording a reasonable opportunity of being heard (meanwhile amendment dated April 1, 1976, came into force authorising the Income Tax Officer to pass the order) The said directions of the Commissioner of Income Tax were challenged by the assessee in appeal before the Tribunal, but the Tribunal by the order dated December 20, 1982, upheld the order of the Commissioner of Income Tax, and, therefore, the order passed by the Tribunal became final. The order dated December 14, 1981, was passed in compliance with the order of the Commissioner of Income Tax. Therefore, when the second order was passed by the Income Tax Officer on December 14, 1981, it was in pursuance of the order passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, which was affirmed by the Tribunal. The Tribunal held that there was no substance in the arguments of learned counsel for the assessee that the Income Tax Officer had no jurisdiction or the order was barred by time. The Tribunal further held that the Income Tax Officer had a jurisdiction to pass the order.

5. As regards the question of limitation, the Tribunal held that this very objection of limitation as raised before the Tribunal in the earlier appeal by the assessee, was overruled by the Tribunal in its earlier order ; therefore, the findings given by the Tribunal with regard to the limitation also became final. Moreover, the period of limitation applies only to the initial order of penalty and not to the order passed by the Income Tax Officer in pursuance of the directions of the higher authorities like the one given by the Commissioner of Income Tax u/s 263 of the Income Tax Act.

6. Shri G. M. Chafekar, learned counsel for the assessee, has again raised these objections with regard to the jurisdiction and limitation. Suffice it to say that in fact the subsequent order passed by the Income Tax Officer was on the basis of the order passed by the Commissioner of Income Tax u/s 263, which was affirmed by the Tribunal; therefore, no question of jurisdiction or of limitation arose. Since the order in question was passed in pursuance of the order passed by the higher authorities in exercise of its jurisdiction u/s 263 of the Income Tax Act, which was confirmed by the Tribunal. Therefore, the finding given by the Tribunal in its earlier order, which was not challenged before the High Court, became final. It is wrong to say that the Income Tax Officer had no jurisdiction and the order in question is barred by time. In this connection, our attention was invited to the decision of the Supreme Court in the case of Varkey Chacko Vs. Commissioner of Income Tax, . In fact, that case is wholly distinguishable on the facts. In Varkey Chacko Vs. Commissioner of Income Tax, the Tribunal set aside the order and held that two aspects must be borne in mind, namely, who may impose the penalty and in what measure. It is true that if the original proceedings are quashed and the case is remanded then that authority alone has jurisdiction to decide the matter. But, in the present case, as the facts mentioned above, it is more than clear that the order passed by the Commissioner of

Income Tax u/s 263 of the Income Tax Act in exercise of revisional jurisdiction was affirmed by the Tribunal and, therefore, the order passed by the Commissioner of Income Tax in exercise of revisional jurisdiction u/s 263 of the Income Tax Act, stood merged in the order of the Tribunal and in pursuance of the order of the Tribunal, the Income Tax Officer decided the matter afresh and passed the penalty order. Therefore, neither the question of jurisdiction nor the question of limitation arises in the present case. Hence, in this view of the matter, we are of the opinion that the view taken by the Tribunal is just and proper and we answer both the aforesaid questions in favour of the Revenue and against the assessee.