Before : G. C. Mital & S. S. Sodhi, JJ.

THE COMMISSIONER OF INCOME-TAX JALANDHAR,—*Applicant*

versus

M/S MEHANGA RAM BALDEV SINGH, HOSHIARPUR,—*Respondent.*

Income Tax Reference No. 48 *to* 50 *of* 1982.

5th April, 1989.

Income Tax Act (XLIII of 1961)—*Ss.* 271(1) (c), 274 *and* 283(2)—*Penalty Proceedings—Jurisdiction to impose penalty—Proceedings for penalty are initiated when I.T.O. passes order and not when notice is issued by Inspecting Assistant Commissioner—Penalty levied by I.A.C. is valid.*

Held, that in this case proceedings were initiated by the Income Tax Officer on 9th September, 1975 and at that time the penalty could be levied by the Inspecting Assistant Commissioner and not by the Income-Tax Officer, and, therefore, the levy of penalty by the Inspecting Assistant Commissioner is valid.

Held, that the Tribunal was in error in coming to the conclusion that the Inspecting Assistant Commissioner ceased to have any jurisdiction for imposing penalty under Section 271(1) (c) after 1st April, 1976. Accordingly, both the questions are answered in favour of the Revenue, that is, in the negative.

(Paras 4 and 5)

Income Tax Act (XLIII of 1961)—*Ss.* 271(1) (c), 274 *and* 283(2)—*Notice under S.* 274—*Not necessary that it should be served on all partners of dissolved firm—Notice and Penalty imposed by I.A.C. valid—Supression of income—Presumption against Assessee—Concealment of Income.*

Held, that Section 283(2) of the Act specifically provides for serving of notice on any of the partners. Therefore, the service of notice was valid and so were the proceedings and order imposing penalty passed by the Inspecting Assistant Commissioner. Hence the question has to be answered against the assessee.

Held, that presumption has to be raised against the assessee that additions made were the income of the assessee and he failed to return the correct income because of fraud, gross or wilful neglect and has to be deemed to have concealed the particulars of his income or furnished incorrect particulars of such income, for the purposes of clause (c) of Section 271(1) of the Act. Since the additions are

100 per cent. that is more than 20 per cent of the returned income, these presumptions have to be raised and since assessee has not given any explanation or produced any evidence to rebut, the Tribunal was right in holding that penalty was leviable. Hence the question is answered in favour of the Revenue.

(Paras 6 and 7)

Reference Under Section 256(1) *of the Income Tax Act* 1961, *by Income Tax Appellate Tribunal Amritsar Bench, Amritsar, to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the order of the Tribunal dated 7th September,* 1981 *in I.T.A. Nos.* 1070, 1071 *and* 1061(*ASR*)/1979 *in R.A. Nos.* 186 *to* 188/(*ASR*)1981 *for Assessment Year* 1972-73:—

Questions at the instance of revenue:—

1. *"Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that the Inspecting Assistant Commissioner ceased to have any jurisdiction for imposing penalty u/s* 271(1)(c) *after 1st April,* 1976 ?

2. *Whether on the facts and in the circumstances of the case the ITAT was right in deleting the penalty of Rs.* 78,216 *imposed u/s* 271(*i*) (c)?"

Questions at the instance of assessee:—

1. *"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the penalty order was not invalied on the ground that the show cause notice for imposition of penalty had been served on one ex-partner and not on all the three separately?"*

2. *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that penalty was leviable in respect of the addition of Rs.* 17,838 *which had been determined on estimated basis on suppressed sales?"*

L. K. Sood, Advocate, *for the Applicant.*

D. K. Gupta, Advocate, O. P. Goyal, Advocate and S. S. Salar, Advocate, *for the Respondent.*

JUDGMENT

Gokal Chand Mital, J.

(1) The Income-Tax Appellate Tribunal, Amritsar, has referred the following two questions at the instance of the Revenue :

"1. Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that the

Inspecting Assistant Commissioner ceased to have any jurisdiction for imposing penalty u/s 271(1) (c) after 1st April, 1976 ?

2. Whether on the facts and in the circumstances of the case the ITAT was right in deleting the penalty of Rs. 78,216 imposed u/s 271(1) (c) ?"

(2) The Tribunal has also referred the following two questions at the instance of the assessee :—

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the penalty order was not invalid on the ground that the show cause notice for imposition of penalty had been served on one ex-partner and not on all the three separately ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that penalty was leviable in respect of the addition of Rs. 17,838 which had been determined on estimated basis on suppressed sales ?"

(3) We first deal with the question referred to at the instance of the Revenue and the second question referred at its instance is consequential to the answer of question No. 1. One composite question could have been framed. The Income Tax Officer by assessment order dated 9th September, 1975 made additions of income on various counts and in the same order observed as under :—

"Proceedings under Section 274 read with Section 271(1) (c) of the Act have already been initiated for concealing the true particulars of his income. Penalty proceedings under Section 274 read with Section 271(1) (a) have also already been started. Charge interest u/s 139."

(4) Since on 9th September, 1975, on the given facts the imposition of quantum of penalty was within jurisdiction of the Inspecting Assistant Commissioner, for levy of penalty, reference was made to him. By the time Inspecting Assistant Commissioner issued notice in penalty proceedings, there was change in the authority to levy the penalty with effect from 1st April, 1976. The assessee challenged the levy of penalty by the Inspecting Assisting Commissioner on the ground that when he issued notice and levied penalty

on both dates he did not have the jurisdiction to do so. The question arose as to on which date it will be deemed that the penalty proceedings were initiated whether on 9th September, 1975 when the Income Tax Officer ordered so or when the notice was issued by the Inspecting Assistant Commissioner after 1st April, 1976. This controversy has been settled by a Full Bench of this Court in *C.I.T.* v. *Mohinder Lal* (1), wherein it is held that the forum to levy penalty has to be seen when proceedings for penalty are initiated and they stand initiated when the Income Tax Officer passes an order and not when the notice is issued by the Inspecting Assistant Commissioner. In this case proceedings were initiated by the Income Tax Officer on 9th September, 1975 and at that time the penalty could be levied by the Inspecting Assistant Commissioner and not by the Income Tax Officer, and, therefore, the levy of penalty by the Inspecting Assistant Commissioner is valid.

(5) The Tribunal was in error in coming to the conclusion that the Inspecting Assistant Commissioner ceased to have any jurisdiction for imposing penalty under Section 271(1) (c) after 1st April, 1976. Accordingly, both the questions are answered in favour of the Revenue, that is, in the negative.

(6) Adverting to the first question referred at the instance of the assessee, the same arises on the following facts. The assessee firm stood dissolved with effect from 21st April, 1973. The penalty proceedings herein relate to the assessment year 1972-73. The notice issued under Section 274 of the Act was served on Jagdish Lal, one of the partners of the dissolved firm and the other two partners were not served. During penalty proceedings initiated under Section 271(1) (c) of the Act, the assessee raised the point that notice should have been served on all the partners of the dissolved firm, but remained un-successful. The point has no merit. Section 283(2) of the Act specifically provides for serving of notice on any of the partners. Therefore, the service of notice was valid and so were the proceedings and order imposing penalty passed by the Inspecting Assistant Commissioner. Accordingly, we answer this question against the assessee, that is, in the affirmative.

(1) (1987) 168 I.T.R. 101.

(7) The relevant facts for the second question are that in the search, the Roznamcha was recovered and almost equal number of sales mentioned therein were not reflected in the account books on the basis of which return was filed. The assessment year is 1972-73 and the sales shown in the Roznamcha are from 16th July, 1971 to 14th April, 1973 which include the period 16th July, 1971 to 31st March, 1972 with which we are concerned. On the basis of Roznamcha, 100 per cent additions were made and on the basis of the addition the Income Tax Officer had come to the conclusion that the assessee had concealed the income and initiated proceedings for levy of penalty. The additions of 100 per cent have been confirmed. The Tribunal upheld the penalty and did not agree with the assessee's contention that since additions were made on estimate basis of suppressed sales, penalty was not leviable. After the amendment in Section 271(1) (c) of the Act and insertion of explanation which are applicable for the assessment year in question, as held by a Full Bench judgment of this Court in *Vishwakarma Industries* v. *C.I.T. Amritsar-I* (2), which has been approved by the highest Court of land in *C.I.T.* v. *Mussadilal Ram Bharose* (3), and *Chuhar Mal* v. *C.I.T.* (4), presumption has to be raised against the assessee that additions made were the income of the assessee and he failed to return the correct income because of fraud, gross or wilful neglect and has to be deemed to have concealed the particulars of his income or furnished incorrect particulars of such income, for the purposes of clause (c) of Section 271(1) of the Act. Since additions are 100 per cent, that is more than 20 per cent of the returned income, these presumptions have to be raised and since assessee has not given any explanation or produced any evidence to rebut, the Tribunal was right in holding that penalty was leviable. Accordingly, this question is also answered in favour of the Revenue, in the affirmative.

(8) The references stand disposed of with no order as to costs.

R.N.R.

(2) (1982) 135 ITR 652.

(3) (1987) 165 ITR 14.

(4) (1988) 172 ITR 250.