

Commissioner of Income-tax Vs. Eastern Development Corpn.

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Court : Kolkata

Decided On : Feb-07-1980

Reported in : [1982]135ITR516(Cal)

Judge : S.C. Deb and ;R.N. Pyne, JJ.

Acts : [Income Tax Act, 1961](#) - Section 271(1), 274, 274(2) and 275; ;Taxation Law (Amendment) Act, 1970

Appeal No. : Income-tax Reference No. 419 of 1974

Appellant : Commissioner of Income-tax

Respondent : Eastern Development Corpn.

Advocate for Def. : None

Advocate for Pet/Ap. : Ajit Sengupta, Adv.

Judgement :

Deb, J.

1. This is a reference under Section 256(1) of the I.T. Act, 1961.
2. The assessee was originally assessed in the status of an unregistered firm relating to the assessment year 1957-58 on a total income of Rs. 19,739.

3. The assessee thereafter made a disclosure of Rs. 10,000 as its income which had escaped assessment for the aforesaid assessment year. The ITO therefore, reopened the assessment under Section 147(a) of the I.T. Act, 1961, and issued the relevant notice under Section 148 of the Act. In response to the said notice the assessee filed a return on March 11, 1970.

4. In the aforesaid return under Section 148 of the Act, the assessee included Rs. 12,500 as hundi loan but failed to prove its genuineness. The ITO, therefore, added Rs. 12,500 as the income of the assessee from undisclosed sources. This order was passed on 12th March, 1970.

5. In the course of reassessment proceedings the ITO was also satisfied that the assessee had concealed the particulars of its income and, therefore, on March 12, 1970, he initiated penalty proceedings under Section 274 read with Section 271(1)(c) of the Act and referred the penalty proceedings on the same day to the LAC under Section 274(2) of the Act as the minimum penalty imposable was more than Rs. 1,000.

6. Before the IAC the assessee did not appear although a reasonable opportunity was given to the assessee to appear before him. The IAC being satisfied that the assessee had concealed the particulars of its income imposed a penalty of Rs. 2,750 under Section 271(1)(c) of the Act.

7. The aforesaid order was passed by the IAC on 17th March, 1972. The assessee preferred an appeal before the Appellate Tribunal. The Tribunal cancelled the levy of penalty on the following grounds :

'In the present case, the order of assessment is not the subject-matter of appeal before the Appellate Assistant Commissioner or before the Income-tax Appellate Tribunal and hence the provisions of Section 275(b) of the Act are applicable inasmuch as no order imposing a penalty can be passed after the expiration of two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed. Besides, when the Taxation Laws (Amendment) Act, 1970, is to be applied with reference to Section 275 of the Act, we cannot ignore the provisions of Section 274(2) of the

Act because after April 1, 1971, the Income-tax Officer can refer the case to the - Inspecting Assistant Commissioner when the minimum penalty leviable exceeded Rs. 25,000.

Thus, considering the case from all standpoints, we are to hold that the Inspecting Assistant Commissioner exercised his jurisdiction not vested in law being violative of the provisions of Section 275 read with Section 274(2) of the Act.'

8. The Tribunal, at the instance of the revenue, has sent the following question to this court under Section 256(1) of the Act:

'Whether, having regard to the Taxation Laws (Amendment) Act, 1970, the Tribunal was right in law in cancelling the levy of penalty imposed under Section 271(1)(c) read with Section 274(2) and Section 275 of the Income-tax Act, 1961 ?'

9. In our opinion the Tribunal has not properly appreciated the relevant provisions of the Act. The ITO initiated proceedings for penalty on March. 12, 1970, and referred the same to the IAC on the same day under Section 274(2) as it then stood. Under that Section the IAC was competent to deal with the penalty proceeding inasmuch as the minimum penalty imposable was more than Rs. 1,000.

10. Section 274(2) of the Act was amended by the T.L. (Amend.) Act, 1970, with effect from 1st April, 1971. The amended section, inter alia, provides that if in the case falling under Section 271(1)(c), the amount of income as determined by the ITO on assessment in respect of which particulars have been concealed or inaccurate particulars have been furnished exceeds Rs. 25,000, the ITO shall refer the case to the IAC who shall, for the purpose, have all the powers conferred under the chapter for the imposition of penalty.

11. The amended Section 274(2) does not, however, take away the jurisdiction of the IAC in respect of the proceedings for the imposition of penalty which are pending before him nor does it provide for a transfer of such penalty proceedings by him to the ITO. It does not also say that the proceedings for the imposition of penalty which are pending before the IAC shall abate if the amount of income as

determined by the ITO on assessment, in respect of which the particulars have been concealed or inaccurate particulars have been furnished, exceeds Rs. 25,000.

12. The jurisdiction of the IAC to impose the penalty in the instant case has, therefore, not been affected by the amendment of Section 274(2) of the Act.

13. Section 275 as amended by the T.L. (Amend.) Act, 1970, prescribes the period of limitation for imposition of penalties, whereas Section 274 regulates the procedure for imposition of penalty. These two sections are independent provisions. They cannot be read together, because, as already stated, Section 274 governs the procedure whereas Section 275 prescribes the period of limitation for the imposition of a penalty.

14. The ITO passed the reassessment order on 12th March, 1970. In the course of reassessment proceedings he was satisfied that the assessee had concealed the particulars of its income. He, accordingly, initiated the penalty proceeding on 12th March, 1970, and referred the same to the IAC on the same day. The penalty was levied on 17th March, 1972.

15. The levy of penalty was, therefore, not time-barred under Section 275(b) of the Act, for, it provides that no order imposing a penalty shall be passed after the expiration of 2 years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed.

16. In the premises, we answer the question in the negative and in favour of the revenue. There will be no order as to costs.

R.N. Pyne, J.

I agree.