



# HIGH COURT OF DELHI

ITR 264-266 OF 1979

Date of decision : December 5, 2000

ADDL COMMISSIONER OF INCOME-TAX	...	...	PETITIONER
...	...	...	Mr. Sanjiv Khanna
...	...	Through ..	Mr Ajay Jha
...	...	...	Advocate

**-VERSUS -**

M/S MOTORLITE MFG CO.	...	...	Respondent
...	...	...	through . Nemo

Coram :-

THE HON'BLE MR JUSTICE ARIJIT PASAYAT, C. J.  
THE HON'BLE MR JUSTICE D. K. JAIN.

- i) Whether Reporters of local papers may be allowed to see the judgment.
- ii) To be referred to the reporter or not ?

**Arijit Pasayat, C. J.**

All these three reference applications involve identical questions which have been referred in terms of direction of this Court under Section 256(2) of the Income-tax Act, 1961( in short the Act) by the Income-tax Appellate Tribunal Delhi Bench A( in short, the Tribunal) for the assessment years 1962-63, 1964-65 and 1965-66:

"Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in canceling the penalty of Rs. 4,194/-, Rs. 65,000/- and Rs. 62,000/- levied by the Inspecting Asstt Commissioner under Section 271(1)( c) for the assessment years 1962-63, 1964-65 and 1965-66 ?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that no penalty is exigible even by taking recourse to the Explanation to Section 271(1)(c) of the Income-tax Act, 1961?"

2. Background fact in a nutshell are as follows:

Assessee was originally a partnership evidenced by under an instrument



modified by another deed dated 21<sup>st</sup> November 1963. There were two partner

Mohinder Singh and Richpal Singh and each had 50% share in profit and loss. The business consisted of manufacture of steel utensils, auto parts and accessories under the name and style of Motorlite Manufacturing Company. In January, 1965, some unadjusted and unclosed books of accounts were seized by the police from the custody of Mohinder Singh. He disowned ownership over them. On the basis of these books and certain others surrendered by Jagdish Lal, accountant, proceedings were initiated under Section 147 and 148 of the Act for assessment years 1962-63 to 1965-66. Notices were served on Mohinder Singh who w.e.f. 3<sup>rd</sup> January, 1965 had become sole proprietor. No returns were filed. After August, 1966, he became untraceable. Meanwhile Richpal had left the country in May, 1965 after executing a general power of attorney in favour of Jagat Singh. Richpal Singh and his attorney started correspondence with the Income-tax officer. Some returns were filed. ITO was requested to summon the firm's books from the police and verify them. It was stated that there were huge losses and they held a decree for consideration of Rs. 33,000/- from Mohinder Singh, he could not realise any part thereof. Returns were filed for assessment years 1962-63, 1964-65 and 1965-66 on various dates. Most of the returns disclosed income as nil. Assessments were made on total income of Rs. 37500/-, Rs. 65000/- and Rs. 62,000/-. The aforesaid figures were arrived at by estimate of sales and application of gross profit rate of 15% for 1962-63 and 16% for 1964-65 and 1965-66. The total income fell short of limit prescribed and accordingly proceedings were initiated under section 271(1)(c), and later referred to <sup>Inspecting Assistant</sup> Income-tax Appellate Commissioner (in short IAC) under Section 274. After verification of material on record penalties were levied. These were assailed before Tribunal in three appeals i.e. ITAs 3978/73, 3981/74 and 3982/74. The Tribunal recorded the following finding to hold that penalty was not leviable :

"It is surprising that the Income-tax Officer made no mention of the sales disclosed in the assessee's books, which were stated to be unclosed and unadjusted. It is therefore absolutely clear that the Income-tax officer was not even in a position to charge the assessee of having suppressed its sales to the Income-tax Department far less was he in a position to establish that the assessee had actually made certain profits and that it had



which the assessments for the assessment years 1962-63, 1964-65 and 1965-66 differ from that for the assessment year 1963-64. For the 1<sup>st</sup> named year, the Income-tax officer has been able to correlate the entries in the Diary seized by the police with those made in the books of account produced before the Income-tax Department. It is clear from the assessment orders for the other three years that there was no such correction.

The next point for consideration is whether in view of the applicability of the proviso to Section 271(109c) the assessee should be deemed to have concealed its income. In this respect the significant points to notice are that the books of account were unclosed and unadjusted, the managing partner, who know anything about the books, had not filed any return and became untraceable. In this position, the other partner Shri Richpal Singh who had evidently not been taking active part in the running of the firm's business, filed some returns estimate and made no secret of how he had arrived at those figures. As Sh Mohinder Singh, the Managing partner, had made himself scarce, the Inspecting Asstt Commissioner could naturally not make any attempt to give him an opportunity of being heard. So, a probe into his conduct was just not possible. In this context, it will be quite impossible to hold that the failure to return the correct income did arise out of any fraud or gross or willful neglect, calling for the levy of penalty u/s 271(1)(c). On the facts of the case, we are of the view that the ratio of the Kerala High Court's decision in ICT v. Sankarsons & Co 85 ITR 627 are clearly applicable and no penalty is exigible, even by taking recourse to Explanation to Section 271(1)(c)."

Applications for reference under Section 256(1) <sup>was</sup> not entertained and on-being moved under Section 256(2) the questions have been referred. We have heard the counsel for Revenue. There is no appearance on behalf of assessee.

3. Counsel for the Revenue submitted that the true import of the explanation to Section 271(1)(c) which was added from 1.4.1964 was not noticed. We find that the Tribunal was conscious of the explanation. But on the facts of the case came to hold that concealment was not proved. Order passed by IAC does not form part of the paperbook. Same has also not been filed by Revenue at the time of hearing. In these circumstances, it is not possible to know as to what weighed with IAC. But in view of the factual conclusions arrived at by the Tribunal, we find no question of law arises and therefore, we decline to answer the questions referred.

CHIEF JUSTICE

D.K. JAIN, J.

December 5, 2000

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