

the Rules. Since implementation of the Rules has already been delayed for a considerably long period, the respondents are further directed to release the necessary benefits, in accordance with the Rules, within three months from today. There shall be no order as to costs.

S.C.K.

Before H. N. Seth, C.J. and M. S. Liberhan, J.

DURGA DASS AGGARWAL AND COMPANY, LUDHIANA,—
Petitioner.

versus

COMMISSIONER OF INCOME TAX, PATIALA,—Respondent.

Income Tax Case No. 48 of 1986

August 12, 1987.

Income Tax Act (XLIII of 1961)—Sections 271(1)(c), 275—Order imposing penalty made within limitation—Demand notice served beyond period prescribed—Validity of such notice—Effect of such notice on order imposing penalty.

Held, that after the penalty order had been made within the period of limitation prescribed therefor the demand notice in respect of it could be served even after the time limit laid down by Section 275 of the Income Tax Act, 1961. The order imposing penalty is not rendered invalid on this score.

(Para 4).

Held, that the question regarding validity of notice of demand or whether the same was barred by limitation is concerned the same falls outside the purview of appellate order of the Tribunal and the Tribunal was quite justified in refusing to state the case for the opinion of this Court.

(Para 11).

Petition under section 256(2) of the Income Tax Act, 1961 (Assessment Year 1972-73) praying that this Hon'ble Court may be pleased to direct the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh to refer the following questions of law which arise out of the said order of the Tribunal :—

- (1) *Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the penalty order*

Durga Dass Aggarwal and Company, Ludhiana v. Commissioner of Income Tax, Patiala (H. N. Seth, C.J.)

under Section 271(1)(c) of the Income-Tax Act, 1961 passed on 27th March, 1976 was within the period of limitation provided under section 275 even if the notice of demand under section 156 though unsigned, was served on the assessee on 20th December, 1977.

- (2) *Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the service of demand notice in relation to the penalty order could be made after the limitation period prescribed under Section 275.*
- (3) *Whether on the facts and in the circumstances of the case, the Tribunal is right in cancelling the order of the Appellate Assistant Commissioner of Income-tax deleting the penalty on the point of limitation and allowing the appeal of the Revenue.*
- (4) *Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the commission paid to S/Shri Niranjana Singh and Kartar Singh was a fictitious claim of the assessee.*
- (5) *Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the statements of Shri Niranjana Singh and Shri Kartar Singh were only with a view to accommodate the assessee and to build up their own capital in their respective HUFs.*

S. S. Mahajan, Advocate, for the Petitioner.

Ashok Bhan, Senior Advocate with A. K. Mittal Advocate, for the Respondent.

JUDGMENT

H. N. Seth, C. J.,

(1) By this application under section 256 (2) of the Income-tax Act, 1961 (hereinafter referred to as the Act), the assessee M/s Durga Dass Aggarwal & Company Ludhiana, prays that the Income-tax Appellate Tribunal, Chandigarh, be directed to state the case and refer the following five questions, which according to the assessee arise from the appellate order of the Income-tax Appellate Tribunal, dated February 23, 1985, in respect of its assessment for the year 1972-73 :—

1. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the penalty

order under section 271 (1) (c) of the Income-tax Act, 1961, passed on 27th March, 1976 was within the period of limitation provided under section 156 even if the notice of demand under section 156 though unsigned, was served on the assessee on 20th December, 1977.

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the service of demand notice in relation to the penalty order could be made after the limitation period prescribed under section 275.
3. Whether on the facts and in the circumstances of the case, the Tribunal is right in cancelling the order of the Appellate Assistant Commissioner of Income-tax deleting the penalty on the point of limitation and allowing the appeal of the Revenue.
4. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the Commission paid to S/Shri Niranjana Singh and Kartar Singh was a fictitious claim of the assessee.
5. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the statements of Shri Niranjana Singh and Shri Kartar Singh were only with a view to accommodate the assessee and to build up their own capital in their respective HUFs.

(2) Briefly stated, the facts giving rise to the present proceedings are that the assessee is a registered partnership firm. In connection with its assessment for the Assessment Year 1972-73, it claimed that it had paid total commission amounting to Rs. 39,435 on sale of expeller parts. This amount included a sum of Rs. 8,510 paid to Shri Niranjana Singh and another sum of Rs. 6,919 to Shri Kartar Singh by way of commission. Thus, the total amount said to have been paid to these two persons amounted to Rs. 15,429. While making the assessment, the Income-tax Officer came to the conclusion that the expenditure of Rs. 15,429 shown to have been paid by the assessee to Sarvshri Niranjana Singh and Kartar Singh was not a genuine expenditure and that the assessee had deliberately attempted to reduce its tax liability through the claim of such commission. In the result, the Income-tax Officer,—*vide* his order

Durga Dass Aggarwal and Company, Ludhiana v. Commissioner of
Income Tax, Patiala (H. N. Seth, C.J.)

dated March 28, 1974 made the assessment, *inter alia*, disallowing the expenditure of Rs. 15,429 and directed that notices under sections 271 (1) and 273 of the Act for imposition of penalty be issued to the assessee. Subsequently, after hearing the assessee and considering its explanation, the Income-tax Officer made an order under section 271 (1) (c) of the Act on March 27, 1976, levying a penalty of Rs. 15,429. Aggrieved, the assessee went up in appeal before the Appellate Assistant Commissioner. It questioned the imposition of penalty both on merits and on technical grounds. So far as merit of the order was concerned, the Appellate Assistant Commissioner held that there was sufficient material on the record to justify the action of the Income-tax Officer in levying the penalty. He, however, concluded that even though the Income-tax Officer had made the order imposing penalty under section 271 (1) (c) of the Act on March 27, 1976, well within the period of limitation, it stood vitiated for the reason that it along with an unsigned demand notice was served upon the assessee on December 20, 1977, after a lapse of one year and nine months. He also held that the unsigned demand notice served upon the assessee was not enforceable and allowed the appeal with following observations :—

“Since there is no positive evidence regarding service of the demand notice within time prescribed under the Act and the service of demand notice on 20th December, 1977 having been barred by limitation and demand notice being unsigned the penalty order of the I.T.O. cannot be sustained. Therefore, the impugned penalty order of the Income-tax Officer levying a penalty of Rs. 15,429 is cancelled.”

(3) The Revenue took the matter up in appeal before the Income-tax Appellate Tribunal and questioned the correctness of the finding of the Appellate Assistant Commissioner to the effect that penalty order passed by the Income-tax Officer was rendered illegal for the reason that it was not served along with a signed demand notice within the period of limitation. The assessee also filed a cross-objection and questioned the correctness of the finding of the Appellate Assistant Commissioner upholding the view of the Income-tax Officer that on merits the Income-tax Officer was justified in levying penalty on the assessee.

(4) The Income-tax Appellate Tribunal by its order dated February 23, 1985, upheld the Appellate Assistant Commissioner's

decision that in the circumstances, a case had been made out for levying of penalty against the assessee. It concluded that in the instant case, the penalty order had been made on March 27, 1976, well within the period of limitation prescribed therefor under section 275 of the Act. It was merely the demand notice, following assessment of penalty, which was served upon the assessee on December 12, 1977 (a date which fell beyond the period of limitation prescribed by section 275 of the Act for making the penalty order). It observed that after the penalty order had been made within the period of limitation prescribed therefor, the demand notice in respect of it could be served even after the time limit laid down by section 275 and concluded that even absence of service of demand notice did not affect the validity of the penalty order made within limitation. In the result, it held that the order of the Appellate Assistant Commissioner deleting the penalty for the reason that the demand notice had been served upon the assessee beyond the period of limitation prescribed by section 275, could not be sustained. It, therefore, allowed the appeal filed by the Revenue and dismissed the cross-objection of the assessee.

(5) Aggrieved, the assessee approached the Income-tax Appellate Tribunal by means of an application under section 256 (1) of the Act requesting it to state the case and refer the five questions of law mentioned in the opening portion of this judgment for the opinion of this Court. The Tribunal rejected the said application on the finding that so far as the fourth and fifth questions were concerned, they were questions of fact, which arose out of the cross-objection filed by the assessee and not from the appellate order of the Tribunal made in the appeal filed by the Revenue. So far as the first two questions were concerned, it opined that it was too elementary proposition that demand notice under section 156 is a consequential action. Requirement of law under section 275 is only of passing the penalty order within the specified period. Accordingly, no referable question on this point arose. Question No. 3 merely was consequential to the first two questions and the Tribunal did not consider it necessary to discuss the same any further. In the result, the Tribunal rejected the reference application under section 256 (1) of the Act filed by the assessee.

(6) The assessee has now invoked the jurisdiction of this Court under section 256 (2) of the Act and prays that the Tribunal should be directed to state the case and refer the above-mentioned five questions of law formulated by it for the opinion of this Court.

Durga Dass Aggarwal and Company, Ludhiana v. Commissioner of
Income Tax, Patiala (H. N. Seth, C.J.)

(7) So far as the fourth and fifth questions relating to the conclusions of the Income-tax authorities regarding assessee's claim in respect of commission said to have been paid to Sarvshri Nirranjan Singh and Kartar Singh and as to whether the said claim was fictitious or not and whether Sarvshri Nirranjan Singh and Kartar Singh made the statements with a view to accommodate the assessee, are concerned, they are essentially questions of fact, to be decided on the basis of material available on the record. It is, therefore, not possible for us to call upon the Tribunal to refer the same for opinion of this Court.

(8) So far as the first two questions are concerned, learned counsel for the assessee did not question before us the correctness of the finding recorded by the income-tax authorities that the penalty order dated March 24, 1970, had been made within the period of limitation prescribed therefor under section 270 of the Act and that it did not stand vitiated on that account. In fact what the assessee intends to urge under the first two questions is that a notice of demand concerning a penalty order cannot be served upon the assessee after the period of limitation mentioned in section 270 has expired and that demand notice served upon the assessee long after expiry of such period cannot be enforced especially when the same was unsigned.

(9) Income-tax Act, 1961, provides for an appeal against an order imposing penalty under section 271 (1) (c) of the Act. It, however, does not provide for any appeal against the action of the income-tax Officer in raising a demand in pursuance of the penalty order, under section 156 of the Act. Accordingly, any question regarding the validity of notice of demand, following imposition of penalty under section 271 (1) (c) of the Act could not fall within the purview either of the appeal filed by the assessee, against the order made under section 271 (1) (c) of the Act, before the Appellate Assistant Commissioner or that of the second appeal disposed of by the Income-tax Appellate Tribunal. In these appeals the two authorities were not directly concerned with the validity or otherwise of the notice of demand. They were concerned merely with the validity of the order passed by the Income-tax Officer under section 271 (1) (c). Learned counsel for the assessee failed to advance any cogent reason for justifying his submission that any defect in the notice of demand has the effect of vitiating the penalty order. He cited before us the case of *Umashankar Mishra v. Commissioner of Income-tax*, (1), wherein a Bench of the Madhya

Pradesh High Court had ruled that an unsigned notice served upon the assessee calling upon him to show cause why penalty be not imposed upon him, is invalid. This case, in our opinion, does not touch the question as to whether an unsigned notice raising a demand in pursuance of a penalty order properly passed renders the penalty order invalid. He also placed reliance on the following observations made by the Judicial Commissioner's Court of Sind in the case of *Khemchand Ramdas v. Commissioner of Income-tax Bombay*, (2):—

“In order to be valid, a demand for super-tax should be made within a reasonable time of the assessment for income-tax, almost simultaneously, if not in the same notice. A demand for super-tax made more than two years after assessment to income-tax is unreasonable and illegal.”

These observations too have no bearing on the question as to whether an order made under section 271 (1) (c) of the Act is rendered invalid if the notice of the demand in pursuance thereof is not served almost simultaneously with the making of it. The learned Judges in this case did not hold that the delay in serving the notice of demand renders the order of assessment to super-tax invalid. They merely held that the delay renders the demand invalid.

(10) As already observed, any question regarding the validity of the notice of demand served upon the assessee falls outside the purview of the appellate order made by the Appellate Assistant Commissioner and the second appellate order passed by the Income-tax Appellate Tribunal. Such a question, therefore, cannot be said to arise out of the appellate order of the Income-tax Appellate Tribunal and no statement of the case in respect thereof can be called. It is, accordingly not necessary for us to consider the question as to whether or not any delay in serving the notice of demand after making of the penalty order under section 271 (1) (c) of the Act renders such notice invalid. In case the assessee is aggrieved by any proceedings initiated in pursuance of the notice of demand issued in this case, his remedy lies not in seeking reference under section 256 of the Act, in connection with an order made by the Tribunal in an appeal directed against the penalty order, but elsewhere.

Sadhi and another v. Atma Singh and others (D. V. Sehgal, J.)

(11) We are accordingly of the opinion that in so far as the real import of the first two questions regarding the validity of the notice of demand or whether the same was barred by limitation, is concerned, the same falls outside the purview of the appellate order of the Tribunal. As already stated, learned counsel for the assessee could not give any cogent reason in support of his submission that in a case where the demand raised following an order made under section 271 (1) (c) of the Act within the period of limitation, is defective, the order imposing the penalty is rendered invalid or as having been made beyond the period of limitation. We are accordingly of the opinion that the Tribunal was quite justified in refusing to state the case and refer those two questions for the opinion of this Court. Clearly, the third question is a question which is consequential to the first two questions and if no statement of case can be called for in respect of those two questions, no statement of case can be called for in respect of the third question as well. The last two questions are, as already mentioned, questions of fact and no statement of the case can be called for in respect of them.

(12) In the result, we find no merit in this application under section 256 (2) of the Act, which fails and is dismissed.

S. C. K.

Before D. V. Sehgal, J.

SADHI AND ANOTHER,—Appellants.

versus

ATMA SINGH AND OTHERS,—Respondents.

Second Appeal from Order No. 58 of 1986.

August 17, 1987.

Evidence Act (I of 1872)—Sections 78(6) and 86—The High Court (Punjab) Order, 1947—Section 13—Indian Independence Act (XXX of 1947)—Section 9—Copy of judgment and decree of Lahore High Court—Such decision given before appointed day—Such copy certified by Copying Agency of Lahore High Court—Admissibility of such copy in evidence.

Held, that the provisions of the High Court (Punjab) Order, 1947, clearly take the judgment and decree of the Lahore High Court out of the purview of Section 86 of the Indian Evidence Act, 1872, and