

(Regulation and Development) Act, LXVII of 1957 and is, therefore, struck down.

(16) The State Government issued notification No. 1217-2-1-B-II-74/6722, dated February 20, 1974, acquiring the right to saltpetre mineral in the lands described in the schedule appended to that notification in exercise of powers conferred by sub-section (1) of section 3 of the Act. In view of the Act having been declared as *ultra vires* this notification is also struck down.

(17) Another notification No. Glg/SP/Auc/1173/73-74/3075-C, dated February 22, 1974, was issued by the State Government for the auction of saltpetre bearing areas in the State of Haryana. That notification also falls and is quashed. The auctions held in pursuance of that notification are, therefore, of no effect.

(18) In this view of the matter, I have not considered it necessary to go into the various pleas raised by the State Government with regard to the validity of the leases in favour of the lessee-petitioners. The grounds stated are that the said leases do not conform with the provisions of the Minor Minerals Concession Rules, 1964. If that be so, the State Government shall be at liberty to take any action against the lessees or the lessors that may be permissible under the said Rules or the Central Act of 1957.

(19) The writ petitions are accordingly allowed but the parties are left to bear their own costs.

DHILLON, J.—I agree.

N.K.S.

INCOME TAX REFERENCE

Before D. K. Mahajan, C.J. & P: S: Pattar, J:

M/S NIEMLA TEXTILE FINISHING MILLS (P) LTD.,  
CHHEHARTA (AMRITSAR),—Applicant.

versus

THE COMMISSIONER OF INCOME-TAX DELHI (CENTRAL)  
NEW DELHI,—Respondent.

I.T.R. 9 of 1973.

May 7, 1974.

*Income-tax Act (43 of 1961)—Sections 271(1)(c) and 274(2)—Inspecting Assistant Commissioner—Whether has the power to impose penalty suo motu—Income-tax Officer determining an amount*

M/s. Niemla Textile Finishing Mills (P.) Ltd., Chheharta (Amritsar)  
v. The Commissioner of Income-Tax Delhi (Central) New Delhi  
(D. K. Mahajan, C.J.)

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*as the concealed income of the assessee—Any other amount not found by the Income-tax Officer to be the concealed income—Penalty thereon—Whether can be imposed by the Inspecting Assistant Commissioner.*

*Held*, that section 271(1) of the Income-tax Act, 1961 confers power upon two authorities only, namely, the Income-tax Officer and the Appellate Assistant Commissioner for the purpose of determining as to whether there has been concealment of income or inaccurate particulars of income have been furnished by an assessee. There is no mention of Inspecting Assistant Commissioner because it is only the former two Officers who are concerned with the making of assessment and not the Inspecting Assistant Commissioner. Therefore, the question whether any income has been concealed or inaccurate particulars of any income have been furnished is a matter which primarily and necessarily rests with the Income-tax Officer or the Appellate Assistant Commissioner. Although an appellate authority normally has the same powers as are vested in the original authority but the Inspecting Assistant Commissioner not being an appellate authority cannot, in the absence of a specific provision conferring such power specifically, be held to have the power to probe into the question of concealment or furnishing of inaccurate particulars of any income. Section 274(2) of the Act under which a case in which the minimum penalty imposable exceeds a sum of Rs. 1,000 is required to be referred to the Inspecting Assistant Commissioner does not clothe him with the power to assess which is a pre-requisite for the imposition of penalty under section 271(1) (c). Section 274 confers power upon the Inspecting Assistant Commissioner in the matter of imposition of penalty and does not confer any power of assessment. It is only after the Income-tax Officer or the Appellate Assistant Commissioner have settled the question that income has been concealed that the matter as to the imposition of penalty comes within the power of the Inspecting Assistant Commissioner. To hold otherwise would mean that the Inspecting Assistant Commissioner can sit in judgment over the Income-tax Officer or the Appellate Assistant Commissioner and be a sort of appellate authority which the Act does not make it one. The power under section 274(2) is a power of reference and unless a case is so referred to it, the Inspecting Assistant Commissioner does not have any power to take up the matter of imposition of penalty *suo motu*. This section is only an enabling provision and instead of the Income-tax Officer, a higher authority has been given power to determine as to what penalty in the given circumstances of a case be levied where it exceeds a sum of Rs. 1,000. Hence where the Income-tax Officer determines the concealment of income of a particular amount, the Inspecting Assistant Commissioner cannot impose penalty on any other amount which has not been found by the Income Tax Officer to be the concealed income of the assessee.

Reference under section 256 (1) of the Income Tax Act, 1961 made by the Income Tax Appellate Tribunal Chandigarh Bench,—vide its order dated 27th December, 1972 to this Hon'ble Court for opinion on the following questions of law arising out of the Tribunal's order dated 17th October, 1970 passed in I.T.A. No. 1360 of 1968-69 (R. A. No. 85 of 1970-1971) for the assessment year 1961-62 :

- (1) Whether on the facts and in the circumstances of the case, the Tribunal was right, in law, in holding that penalty under section 271(1)(c) was exigible ?
- (2) Whether on the facts of the case, the Income-tax Officer's observation that the penalty proceedings were started for concealment of Rs. 8,000, the Inspecting Assistant Commissioner could treat the amount of Rs. 69,228 as an item of concealment? and
- (3) Whether on the facts of the case, the Tribunal was right in law, in directing that the penalty be recomputed with respect to the sustained addition of Rs. 35,419 out of commission and Rs. 6,800 on account of salary and when the the amount of Rs. 6,800 was not treated as an item of concealment by the Inspecting Assistant Commissioner who levied the penalty ?”

K. L. Kapur, Advocate, with D. N. Aggarwal, Advocate and B. N. Aggarwal, Advocate.

D. N. Awasthy, Advocate, (S. S. Mahajan, Advocate with him).

#### JUDGMENT

D. K. Mahajan, C.J.—After the Income-tax Officer had passed the assessment order regarding assessment year 1961-62, the following note was recorded :—

“The assessee concealed income of Rs. 8,000/- from undisclosed sources. Therefore, the penalty proceedings under section 271(1)(c) had been started separately.”

As the minimum penalty imposable was more than Rs. 1,000/- the case was referred to the Inspecting Assistant Commissioner under section 274(2) of the Income-tax Act, 1961 (hereinafter referred to as the Act). After hearing the assessee, the Inspecting Assistant Commissioner came to the conclusion that the escapement was with regard to Rs. 69,228/- in addition to Rs. 8,000/-. He, therefore, levied a penalty of Rs. 25,000/-. The assessee appealed to the

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Appellate Tribunal and the Appellate Tribunal reduced the quantum of penalty. With regard to the sum of Rs. 8,000/- it held that a sum of Rs. 3,000 had not been concealed. With regard to the balance amount of Rs. 5,000/-, it took the view that in view of the Supreme Court decision in *Commissioner of Income-tax, West Bengal and another v. Anwar Ali* (1), no penalty was exigible. However, it reduced the amount of undisclosed income from Rs. 69,228/- to Rs. 35,419/- and added to it a sum of Rs. 6,800/- which had been received by the directors of the firm as salaries. The assessee was dissatisfied with this order and moved the Tribunal under section 256(1) of the Act for referring the following question of law for the opinion of this Court :

- “(1) Whether on the facts and in the circumstances of the case, the Tribunal, was right, in law, in holding that penalty under section 271(1)(c) was exigible ?
- (2) Whether on the facts of the case, the Income-tax Officer's observation that the penalty proceedings were started for concealment of Rs. 8,000/-, the Inspecting Assistant Commissioner could treat the amount of Rs. 69,228/- as an item of concealment ? and
- (3) Whether on the facts of the case, the Tribunal was right, in law, in directing that the penalty be recomputed with respect to the sustained addition of Rs. 35,419/- out of commission and 6,800/- on account of salary and when the amount of Rs. 6,800/- was not treated as an item of concealment by the Inspecting Assistant Commissioner who levied the penalty ?”

This is how the reference has been placed before us.

The short contention of the learned counsel for the assessee is that the Income-tax Officer had merely determined that the concealment was with regard to the item of Rs. 8,000/-. Therefore, according to the learned counsel, no penalty could be levied on any other amount. On the other hand, Mr. Awasthy, learned counsel for the Department contends that in view of the following expression used in section 274(2) of the Act.

“.....shall.....have all the powers conferred under this Chapter for the imposition of penalty.”

it necessarily follows that the Inspecting Assistant Commissioner could determine whether there were other amounts of concealed income besides the one determined by the Income-tax Officer for the purpose of section 271(1) (c) of the Act. In this connection, it would be proper to set out the relevant provisions of section 271(1)(c) and section 274(2) of the Act. These are to the following effect :

“271(1) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(a)

to

(b)

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty—

(i)

to

(ii)

“(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than twenty per cent, but which shall not exceed one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income,

274 (2) Notwithstanding anything contained in clause (iii) of sub-section (1) of section 271, if in a case falling under clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.”

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As we read section 271(1) of the Act, it confers power on two authorities, namely, the Income-tax Officer or the Appellate Asstt. Commissioner in the matter of determining whether the income has not been returned without reasonable cause or that the notices under sections 142(1) and 143(2) of the Act have not been complied with without reasonable cause or there has been a concealment of particulars of income or inaccurate particulars of income have been furnished. It will be significant to note that there is no mention so far as the Inspecting Assistant Commissioner is concerned in sub-section (1) of section 271 of the Act. The reason for this is obvious. It is only the Income-tax Officer or the Appellate Assistant Commissioner who are concerned with the assessment and it is not disputed that so far as the Inspecting Assistant Commissioner is concerned, he is not concerned with the assessment. Therefore, the question whether any income has been concealed or inaccurate particulars of any income have been furnished is a matter which primarily and necessarily rests with the Income-tax Officer or the Appellate Assistant Commissioner. It is well known that an appellate authority normally has the same powers as the original authority. Unless these powers were specifically conferred upon the Inspecting Assistant Commissioner, it would not be proper to hold that he can probe into the question of concealment of any income or furnishing of inaccurate particulars of any income. If we examine the language of section 274(2) of the Act, it is clear that if the minimum penalty imposable exceeds a sum of Rs. 1,000/- which in the instant case, it did, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty. This provision clearly shows that all the powers conferred by section 274(2) of the Act on him do not clothe him with the power to assess which is a pre-requisite so far section 271(1) (c) of the Act, is concerned. If section 274 of the Act, on which, Mr. Awasthy, learned counsel for the Department relies for his contention, is read as a whole, it shall be obvious that the powers conferred by it upon the Inspecting Assistant Commissioner are in the matter of imposition of penalty and not for purposes of assessment. That is why section 271(1) of the Act mentions the Income-tax Officer and the Appellate Assistant Commissioner. It is also significant that the question whether the penalty should or should not be imposed is again by section 271(1) of the Act left to the domain of the aforesaid two authorities. It is only after these authorities settle the question

that income has been concealed etc., then the matter as to the imposition of the penalty is left to the Inspecting Assistant Commissioner. To hold otherwise would mean that the Inspecting Assistant Commissioner can sit in judgment over the Income-tax Officer or the Appellate Assistant Commissioner and be a sort of appellate authority when the Act does not make it one. In fact, Mr. Awasthy admits that the powers of the authorities mentioned in section 271(1) and section 274(2) of the Act are the same. The correct position is that the power under section 274(2) of the Act is a power of reference and unless a case is referred, the Inspecting Assistant Commissioner will have no power to examine it. For instance, if the Income-tax Officer had come to the conclusion that Rs. 8,000/- was not a concealed income, there would have been no reference and in that situation, on the facts of the present case, the Inspecting Assistant Commissioner would be *coram non judice* to examine whether a sum of Rs. 69,228/- had been concealed. If the argument of Mr. Awasthy, learned counsel for the Department was correct, then he could *suo motu* have done so, but the learned counsel concedes that there is no such "*suo motu*" power vested in the Inspecting Assistant Commissioner in the matter of levy of penalty. Mr. Awasthy, however, maintains that his powers are co-terminus with the powers of the income-tax Officer. This argument is partially correct and not wholly, because there are certain powers which, in the very nature of things, are not conferred upon the Inspecting Assistant Commissioner. Moreover, the rule is well settled that the powers which are expressly conferred on one authority cannot be deemed to have been conferred on a totally different authority unless it can be so held by necessary implication. This cannot be said of section 274 of the Act. Section 274 of the Act is merely an enabling provision and the logic of it is that instead of the Income-tax Officer, a higher authority is given the power to determine as to what penalty should be levied in the given circumstances of a case where the quantum of penalty to be leviable exceeds Rs. 1,000/-. The view we are taking finds support from the decision of the Supreme Court in *D. M. Manasvi v. Commissioner of Income-tax*, (2), wherein it was observed as follows :—

"It would, in deed, be the satisfaction of the Income-tax Officer in the course of the assessment proceedings regarding the concealment of income which would constitute the basis and foundation of the proceedings for levy of penalty."

Sardar Umrao Singh, etc. v. The State of Punjab, etc.  
(P. S. Pattar, J.)

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In this view of the matter, we are of the opinion that no penalty was exigible in the circumstances of this case because the amount of Rs. 8,000/- which was held to be exigible for penalty was found by the Tribunal not to be so exigible.

For the reasons recorded above, we answer all the three questions referred to us in the negative, that is, in favour of the assessee and against the Department. No costs.

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B. S. G:

CIVIL MISCELLANEOUS

Before D. K. Mahajan, C.J. & P. S. Pattar, J.

SARDAR UMRAO SINGH, ETC.,—*Petitioners.*

*versus*

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 854 of 1969

&

Civil Misc. No. 2205 of 1974.

May 8, 1974.

*Punjab Land Revenue Act (XVII of 1887, as amended by Punjab Act I of 1968)—Section 48 and 64—Punjab Resumption of Jagirs Act (XXXIX of 1967)—Sections 3 & 5—Section 48 & 64, Land Revenue Act as amended, exempting land revenue on small holdings—Whether extinguish Cis Sutlej Jagirs—Government—Whether liable to pay Jagir amount to such Jagirdars inspite of the exemption of the land-revenue.*

*Held*, that sections 48 and 64 of Punjab Land Revenue Act, 1887 as amended by Punjab Act I of 1968, exempt owners of small holdings of land from payment of land revenue. The Amending Act does not contain any provision to extinguish Cis Sutlej Jagirs and it has nothing to do with extinguishment or resumption of these jagirs. The Punjab Legislature has power to amend the Resumption of Jagirs Act, 1957 to resume the Cis Sutlej Jagirs, which were declared to be Military jagirs, but it did not do so. If the legislature wanted to extinguish these jagir amounts to the extent the land revenue was abolished on the small holding, it would have