(1986) 09 RAJ CK 0071

In the Rajasthan High Court

Case No : Income Tax Reference No. 13 of 1978

Additional Commissioner of Income Tax APPELLANT

Vs

Dwarkadas Devkinandan RESPONDENT

Date of Decision : 30-09-1986

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1987) 59 CTR 171 : (1987) 167 ITR 277 : (1987) 33 TAXMAN 532

Hon'ble Judges : J.S. Verma, C.J;I.S. Israni, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; K.L. Saxena, for the Respondent

Judgement

1. This is a reference at the instance of the Revenue to answer the following questions of law, namely :

Assessment year 1966-67 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty of Rs. 25,000 levied by the Inspecting Assistant Commissioner u/s 271(1)(c) read with Section 274(2) of the Income Tax Act, 1961 ?"

Assessment year 1967-68 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty of Rs. 12,200 levied by the Inspecting Assistant Commissioner u/s 271(1)(c) read with Section 274(2) of the Income Tax Act, 1961 ?"

2. The relevant assessment years are 1966-67 and 1967-68. The assessee is a building contractor and also deals in furniture. He did not maintain proper accounts of his business and filed returns for these two assessment years on the basis of estimate showing the income of Rs. 14,000 each year, which was estimated on the basis of gross profits worked out at the rate of 15%. The

Income Tax Officer assessed the assessee''s income at Rs. 38,616 and Rs. 26,195, respectively, for these two assessment years applying a net profit rate at 13% on receipt from construction work and 15% on estimated sale of furniture. This was done with the agreement of the assessee who accepted these assessments. Thereafter, penalty proceedings were initiated by referring the matter to the Inspecting Assistant Commissioner. The Inspecting Assistant Commissioner rejected the assessee''s explanation that there was no concealment of income and held that the assessee was liable to imposition of penalty in respect of both these years u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Penalty was accordingly imposed on the assessee for both these years. The assessee preferred an appeal to the Tribunal against imposition of these penalties. The Tribunal has allowed those appeals and set aside the penalties imposed for both the years. The only ground on which the Tribunal has decided in the assessee''s favour is that computation of income at the time of assessment being on the basis of higher rate, there was no case for imposition of penalty. Aggrieved by the view taken by the Tribunal, the Revenue sought a reference u/s 256(1) of the Act and on that application being rejected by the Tribunal, this court was approached for a direction u/s 256(2) of the Act. It is as a result of the direction given by this court on the application made by the Revenue that the Tribunal has stated the case and referred the aforesaid questions for the decision of this court.

3. Having heard both the sides, we are satisfied that the Tribunal has set aside the penalty imposed on the assessee for both these years without recording the requisite findings on the basis of which alone the question of penalty can be decided. The returned income being less than 80% of the assessed income for each of these two years, prima facie, the Explanation to Section 271(1)(c) of the Act as applicable during the relevant assessment years was applicable. This being so, it had to be further seen whether the requisite difference between the assessed income and the returned income remained in order to draw a presumption arising under the Explanation taking into account the assessee''s explanation, if any, and deduction on account of any bona fide expenditure claimed and shown by the assessee and disallowed at the time of assessment. No finding on any of these questions has been given by the Tribunal and, therefore, the ultimate outcome which depends on consideration of the Explanation to Section 271(1)(c) of the Act cannot be decided in the absence of these findings. Obviously, this was not done on account of the fact that all concerned including the Tribunal appear to have overlooked this statutory provision contained in the Explanation to Section 271(1)(c) of the Act.

4. In view of the above conclusions reached by this court, the matter has to go back to the Tribunal for a fresh decision by adverting to the above observations. For this reason, further arguments advanced on behalf of the assessee do not arise for consideration by us at this stage and it would be for the Tribunal to consider and decide all questions which arise for decision on this point.

5. Consequently, the reference is answered by us as follows :

"The Tribunal was not justified in cancelling the penalties for the assessment years 1966-67 and 1967-68 without recording the requisite findings required in accordance with the Explanation to Section 271(1)(c) of the Income Tax Act, 1961, as applicable during those years."

6. The reference is answered accordingly. There will be no order as to costs.