(1989) 03 MP CK 0032

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 133 of 1986

Bhanwarilal and Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 02-03-1989

Acts Referred:
Income Tax Act, 1961 — Section 271(1)

Citation : (1990) 84 CTR 271 : (1990) 184 ITR 233

Hon'ble Judges : G.G. Sohani, Acting C.J.;R.K. Verma, J

Bench : Division Bench

Advocate : K.C. Gangarade, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion ;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was liable to penalty u/s 271(1)(a) read with Sub-section (2) of Section 271 of the Income Tax Act in spite of the fact that the assessee had no ''assessed tax" in terms of the Explanation to Section 271(1)(i)(b) of the Income Tax Act, 1961 ?"

2. The material facts giving rise to this reference, briefly, are as follows :

In filing a return for the assessment year 1978-79, there was delay of 34 months on the part of the assessee. The Income Tax Officer, therefore, initiated penalty proceedings u/s 271(1)(a) of the Act. The assessee showed cause but the Income Tax Officer held that the assessee had failed to show that there was reasonable cause for the delay in filing the return. The Income Tax Officer, therefore, levied penalty u/s 271(1)(a) of the Act. Aggrieved by the order passed by the Income Tax Officer, the assessee preferred an appeal, That appeal was allowed by the Appellate Assistant Commissioner. Hence, the Revenue filed an appeal before the Tribunal. The Tribunal allowed that appeal and restored the order passed by the Income Tax Officer. Aggrieved by the order passed by the Tribunal, the assessee sought reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this court for its opinion.

3. At the time of hearing, learned counsel for the parties conceded that the matter arising in. this reference was covered by the judgment of this court in Commissioner of Income Tax Vs. Bhabuti Contractor, (Misc. Civil Case No. 43 of 1983 decided on 13-3-1987--Gwalior Bench). In view of that decision, it must be held that, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was liable to 271(1)(a) of the Act,

4. Our answer to the question referred to this court is, therefore, in the affirmative and against the assessee. In the circumstances of the case parties shall bear their own costs of this reference.