(1981) 07 CAL CK 0017

In the Calcutta High Court

Case No : Income-tax Reference No. 231 of 1979

B.P. Bajoria APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 08-07-1981

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

Citation : (1982) 135 ITR 734

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : N.K. Poddar and R. Saha, for the Appellant;Suhas Ch. Sen and S. Mukherjee, for the Respondent

Judgement

Sabyasachi Mukharji, J.—The following question has been referred to this court u/s 256(1) of the I.T. Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the penalty imposed u/s 271(1)(a) of the I.T. Act, 1961 ?"

2. Whether, in a particular case, there was sufficient cause for the failure to file a return and as such penalty should be directed or not is primarily a question fact. On this aspect, the Tribunal seems to have considered all the aspects of the question. We can do no better than to set out the relevant portion of the order of the Tribunal.. The Tribunal has observed, inter alia, as follows :

"6. We have considered the rival submissions of the parties and are of the view that, on the facts and circumstances obtaining in the present case, the order of the AAC is eminently fair and reasonable and does not call for any interference. It is pertinent to note that the assessee had requested for extension of time for submission of his return of income up-to February 29, 1972, (sic) while the AAC has computed the period of default from June 20, 1972, (sic) on which date M/s. Bajoria Bros, filed its return of income. We are not at all impressed by the submissions made on behalf of the assessee that since he could not adjust and complete the books of account of his own business in time, he had a reasonable cause for not filing his return of income on or before the due date. In this connection, it is pertinent to note that the assessee''s accounting year ended on June 30, 1970, and he filed his return of income after 5 1/2 years. It is an admitted fact that the assessee is an "old assessee" and, therefore, it is expected of him to comply with the legal requirements under the Act. We entirely agree with the conclusion arrived at by the Appellate Assistant Commissioner that after June 20, 1972, the assessee had no valid or bona fide reason for the delay in the submission of his return of income. As we are deciding the appeal as well as the cross-objection on the facts available on record, we do not intend to discuss the decisions relied on behalf of the parties concerning the aspect of mens rea."

3. Some argument was sought to be advanced that the Tribunal had not decided on the question of mens rea. On this aspect, reliance was placed on certain observations in the case of V.L. Dutt Vs. Commissioner of Income Tax, .. The Tribunal seems to have proceeded on the basis that even if the mental element was necessary whether, in a particular case, sufficient cause was made out or not is a question of fact and the Tribunal has taken into consideration all the relevant facts, as have been mentioned hereinbefore, and was right in its conclusion. In these circumstances, in our opinion, it cannot be said that the Tribunal committed any error of law or erred in arriving at its conclusion which it did.

4. In the premises, the question is answered in the affirmative and in favour of the revenue.

5. In the facts and circumstances of the case, there will be no order as to costs.

Sudhindra Mohan Guha, J.

6. I agree.