(2004) 10 AHC CK 0046

In the Allahabad High Court

Case No : IT Reference No. 98 of 1986 29 October 2004

Chief Commissioner (Admn.) APPELLANT

Vs

Sharma Sugar Industries RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:
Income Tax Act, 1961 — Section 256, 271

Citation : (2005) 145 TAXMAN 545

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : A.N. Mahajan, for the Revenue, for the Appellant;

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following two questions of law u/s 256(1) of the Income Tax Act, 1961, (hereinafter referred to as ''the Act'') for opinion to this court:

"1. Whether on the facts and in the circumstances of the case, Tribunal was correct in believing the statement of the Munim in the cross examination by the assessee''s counsel on 26-3-1980 when the said Munim had admitted before the Income Tax Officer on 17-9-1979 that he had not written the Cane Purchase Register?

2. Whether on the facts and in the circumstances of the case, Tribunal was justified in law in canceling the penalty of Rs. 22,736 levied u/s 271(1)(c)?"

2. Briefly stated the facts giving rise to the present reference are as follows:

The reference relates to the assessment year 1976-77. The respondent assessee is a firm consisting of two partners, which had done the business of Khandsari in the assessment year 1976-77, it filed return of income showing income of Rs. 10,000. On verification of the books of account the Income Tax Officer noticed that there was inflated purchase by Rs. 38,000. He accordingly added the said amount in the income assessed by him. Penalty proceedings u/s 271(1)(c) of the

Act was also initiated. The Income Tax Officer imposed penalty of Rs. 22,736. He had held that the assessee had concealed the particulars of his income. Feeling aggrieved the respondent preferred appeal before the CIT (A), who had upheld the order. In further appeal the Tribunal has deleted the penalty.

3. We have heard Shri A.N. Mahajan, learned standing counsel for the revenue. None appeared for the assessee.

4. It may be mentioned here that one of the partners, namely, Ram Kumar Sharma was an illiterate person and did not know anything about the books of account and the other partner Surendra Kumar Misra, though literate did not have any knowledge of books of account which were written by the Munim. The Munim was produced before the Income Tax Officer, who initially denied to have made any interpolation in the purchase register, but on a cross-examination he had admitted to have interpolated the books of account, but attributed his act to have been done on the instance of the Manager under threat and coercion. The Tribunal has found that there was no mala fide on the part of the respondent in concealment of the income as it was a bona fide act. On the findings recorded by the Tribunal, we are of the opinion that the Tribunal was justified in believing the statement of Munim in the cross-examination.

5. In this view of the matter, we answer the questions referred to us in affirmative, i.e., in favour of the assessee and against the revenue. There shall be no order as to costs.