(2012) 02 AHC CK 0294

In the Allahabad High Court

Case No : Income Tax Reference No. 21 of 1999

Cit Kanpur — APPELLANT

Vs

S. Ganga Prasad — RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 271(1)
Income Tax Act, 1961 — Section 256(1), 271(1)
Income Tax Act, 1961 — Section 256(1), 271(1)

Citation : (2012) 02 AHC CK 0294

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Sri R.K.Upadhyaya, learned senior standing counsel for the Revenue and Sri R.S.Agarwal, learned counsel for the respondent.

3. At the instance of the Revenue the Income Tax Appellate Tribunal has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion of this Court:

"Whether on the facts and in the circumstances of the case, the I.T.A.T. was legally justified in confirming the action of the First Appellate Authority of deleting the penalty of Rs. 12,620/- imposed by the A.O. u/s 271(1)(c) of the I.T.Act, relying on the decision of the Tribunal in ITA No. 661 (Alld.) 1987 dated 14.1.1991 which had not been accepted by the department and a reference u/s 256(1) was justified which has been accepted by the I.T.A.T.?""

4. The brief facts of the case are that on the basis of a paper found during the course of a search conducted in the case of the assessee, an addition of Rs. 2,00,000/- was made on account of unexplained investment for the assessment year 1981-82. Interest of Rs. 12,754/- was also included in the total income of the assessee and in the context of this addition a penalty of Rs. 12,620/- was

imposed u/s 271(1)(c) of the Act. Aggrieved with the above penalty order, the assessee preferred an appeal before the C.I.T.(A) who deleted the penalty on the premise that the addition, which formed the basis of the penalty was deleted by the Tribunal vide order dated 14.1.1991 rendered in I.T.A. No. 661 (Alld.) of 19887 The Department preferred a second appeal before the Tribunal, who dismissed the appeal on the ground that the addition, on the basis of which the penalty was imposed, was deleted by the Tribunal and there remains no basis of levy of penalty.

5. The Revenue did not accept the order passed by the Tribunal on the quantum side and sought reference u/s 256(1) of the Act. The Tribunal had referred the question proposed by the Revenue which came up to be decided by this Court in Income Tax Reference No. 119 of 1991 (The Commissioner of Income Tax Kanpur v. M/s Shadiram Ganga Prasad and others). This Court vide judgment and order dated 27th April, 2010 had answered the question referred to in the affirmative which is against the Revenue and in favour of the assessee. As the question referred to by the Tribunal on the quantum side at the instance of the Revenue has been answered in favour of the assessee vide judgment and order dated 27th April, 2010 in our considered opinion the basis of imposition of the penalty does not exist and the Tribunal was justified in deleting the penalty.

6. The question referred to us is, therefore, answered in the affirmative, i.e. in favour of the assessee and against the Revenue. However, there shall be no order as to costs.

