(2012) 02 AHC CK 0287

In the Allahabad High Court

Case No : Income Tax Reference No. 17 of 1999

Cit Kanpur APPELLANT

Vs

Shadi Ram Ganga Prasad RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144B, 256(1), 271(1)
Income Tax Act, 1961 — Section 143(3), 144B, 256(1), 271(1)
Income Tax Act, 1961 — Section 143(3), 144B, 256(1), 271(1)

Citation : (2012) 02 AHC CK 0287

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.

2. 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 dismissing the departmental appeal and confirming the action of the First Appellate Authority of deleting the penalty of Rs. 1,49,900/- imposed by the A.O. u/s 271(1)(c) of the I.T.Act, relying on the order of the Tribunal in ITA No. 1573 (Alld.) 1987 dated 30.4.90 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.?"

3. The return showing income of Rs. 3,85,090/- was filed on 17.9.1981 which was revised to Rs. 4,05,90/- on 13.12.1983. The assessment was completed on 24.9.1984 u/s 143(3)/144B on total income of Rs. 8,28,380/- which included an addition of Rs. 2,00,000/- made by the Assessing Officer on account of

undisclosed investment and also Rs. 7,440/- interest thereon. Accordingly, penalty proceedings u/s 271(1)(c) were also initiated during the course of assessment proceedings and subsequently a penalty of Rs. 1,40,900/- was imposed. Aggrieved with the above penalty order, the assessee preferred an appeal before the C.I.T.(A) who vide his order dated 26.6.1990 cancelled the penalty of Rs. 1,40,900/-. The Department preferred a second appeal before the Tribunal, who vide order dated 26.2.1996 dismissed the appeal and confirmed the cancellation of penalty by the first Appellate Authority observing that the addition was deleted by the Tribunal vide order in I.T.A. No. 1573(Alld.)/1987 dated 30.4.1990 and there remains no basis of levy of penalty.

4. 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 imposing the penalty does not exist and the Tribunal was jusfied in deleting the penalty.

5. 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.

