

(1981) 04 OHC CK 0014

In the Orissa High Court

Case No : Special Jurisdiction Case No. 58 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Abdul Gafoor

RESPONDENT

Date of Decision : 23-04-1981

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 271(1)

Citation : (1981) 131 ITR 577

Hon'ble Judges : R.N. Misra, C.J.;J.K. Mohanty, J

Bench : Division Bench

Judgement

1. This is an application u/s 256(2) of the I,T. Act of 1961, for a direction to the Cuttack Bench of the Income Tax Appellate Tribunal to state a case and refer the following two questions for the opinion of the court :

" (i) Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in deleting the penalty levied u/s 271(1)(a) of the Income Tax Act ?

(ii) Whether, on the facts and in the circumstances of the case, the explanation of the assessee could constitute a reasonable cause for the delayed submission of return ?"

2. Assessee is an individual. The relevant assessment year is 1971-72. The return u/s 139 of the Act was due by 30th June, 1971, but was actually filed on December 7, 1975, notwithstanding the fact that a notice u/s 139(2) had been served on the assessee on December 7, 1971, Assessee had his personal income and share income from two firms. He took the plea that the share income of the firm had not been worked out in respect of both the firms and, therefore, he was not in a position to make the return earlier. In answer to the notice u/s 271(1)(a) of the Act, he explained the delay of 28 months in the submission of the return by relying on that feature. The ITO did not accept the explanation and imposed a penalty. The AAC reduced the penalty, but the Tribunal vacated the imposition by

relying upon the decision of this court in the case of Commissioner of Income Tax Vs. Baijnath Chopolia, , and decisions of some other courts.

3. Undoubtedly, there has been delay in the matter of making the return. Sub-section (1)(a) of Section 271 of the Act authorises the imposition of a penalty where there is a delay without reasonable cause in the furnishing of the return. On an overall assessment of the facts placed, the Tribunal has come to the conclusion that there was a reasonable cause for the delay in the matter of submission of the return and the absence of the particulars of assessee's share income from the two firms had led to this position. We think the finding is one of fact and no question of law as such arises in a case of this type. We are, therefore, not inclined to call for a statement.

4. The application is, accordingly, dismissed. No costs.