
(2003) 04 AHC CK 0185

In the Allahabad High Court

Case No : Income-tax Reference No. 310 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Ajay Dal Mill

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2004) 186 CTR 674 : (2003) 263 ITR 66

Hon'ble Judges : K.N. Ojha, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Bharatji Agrawal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a reference u/s 256(1) of the Income Tax Act 1961, wherein the following questions have been framed :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal's finding regarding revised return dated October 15, 1976, having been filed before detection of discrepancy by the Income Tax Officer was perverse in view of such discrepancy having been pointed out by the Income Tax Officer on an earlier date, namely, September 10, 1976 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the question of the provisions of the Explanation below Section 271(1)(c) being attracted in the case had to be decided not with reference to the income declared as per the original return, but with reference to the income declared as per the revised return ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in cancelling the penalty imposed u/s 271(1)(c) of the Act ?"

2. In spite of service of notice nobody appeared for the assessee. On behalf of the applicant, Shri Bharatji Agrawal, senior advocate, appeared.

3. The assessee is a partnership firm, which carries on business in the manufacture and sale of "dal". The return under the Income Tax Act was filed on March 10, 1975, showing the income Rs. 9,722. Subsequently, while examining the books of account of the firm on September 18, 1976, the Income Tax Officer found that although last purchase of "Masoor" amounting to Rs. 16,452 was on February 27, 1974, yet the assessee had shown a closing stock of Rs. 2,795 only. Therefore, it was pointed out by the Income Tax Officer that the Income Tax return filed on March 10, 1975, was not correct. A revised return was filed on October 15, 1976, enhancing the stock by Rs. 10,000 and the income was accordingly reported as Rs. 19,722. The ground for filing the revised return was stated to be a clerical error. But the assessing authority rejected the assessee's contention. This has been a case of evasion of tax and filing of the revised return was not accepted to be voluntary on the basis of errors on the ground that the earlier return has been filed on some clerical errors. This addition by the assessing authority has been upheld up to the Tribunal.

4. While considering the issue of imposition of penalty under the Explanation to Section 271(1)(c) of the Act, it was held that the proceedings were penal in character and the Department has to prove the case. The Income Tax Officer rejected the explanation and held that he deliberately furnished inaccurate particulars of income by suppression of sale proceeds of "Masoor" purchased on February 27, 1974, and hence the penalty to the tune of Rs. 16,115 was imposed, and the Explanation added by the Finance Act, 1964, with effect from April 1, 1964, was held to be applicable. The said Explanation reads as under :

"Explanation.--Where the total income returned by any person is less than eighty per cent. of the total income (hereinafter in this Explanation referred to as the correct income) as assessed u/s 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) of this sub-section."

5. Against this order, the appeal of the assessee was dismissed. However, the Tribunal while allowing the second appeal on the issue of penalty allowed the appeal and set aside the penalty so imposed.

6. The Tribunal committed an error in taking a note of the date as January 14, 1977, for discrepancy in account, etc., for it was September 18, 1976. In reply, the return has been filed on October 15, 1976. Therefore, it could not be held to be a case of filing the revised return voluntarily for the reason that the discrepancy, etc., has been explained to him as pointed out by the assessing authority on September 18, 1976. Since the Explanation was applicable in the instant case and the burden was on the assessee, the Tribunal has wrongly

shifted the burden of proof on the Revenue.

7. The Explanation aforementioned clearly applies to this case in view of the judgment of the Supreme Court in Durga Prasad Chunni Lal v. CIT [1980] 121 ITR 319 . Our view stands fortified by a Division Bench judgment of this court in Commissioner of Income Tax Vs. Gyan Prakash, , wherein it has been held that if the Explanation is applicable, the burden of proof lies on the assessee and not upon the Revenue. As in the original return income has been shown on Rs. 9,722 and assessed income was Rs. 26,250 and being a difference of more than 80 per cent. as Explanation says, and the burden of proof was shifted to the Revenue (sic).

8. Accordingly, all the three questions are decided in favour of the Revenue.