
(1971) 01 AHC CK 0037

In the Allahabad High Court

Case No : Income-tax Reference No. 475 of 1969

Commissioner of Income Tax

APPELLANT

Vs

Baboo Ram Lachman Dass

RESPONDENT

Date of Decision : 10-01-1971

Acts Referred:

Income Tax Act, 1922 — Section 28(1)

Citation : (1972) 85 ITR 405

Hon'ble Judges : R.S. Pathak, J;H. Swarup, J

Bench : Division Bench

Advocate : R.R. Misra, for the Appellant; None, for the Respondent

Judgement

H. Swarup, J.—The Income Tax Appellate Tribunal has referred to us the following question of law :

"Whether, on the facts and in the circumstances of the case, the view taken by the Appellate Tribunal that no penalty is eligible is sound in law ?"

2. The assessee is a registered firm carrying on business in grain commission agency, speculation and business on its own account. It filed return of the income for 1958-59 showing an income of Rs. 30,095. The Income Tax Officer in the course of assessment proceedings found that the assessee had obtained overdrafts from the bank on the security of grains. On a comparison of the statement to the bank furnished by the assessee and the stock accounts, the Income Tax Officer found that the assessee had pledged goods to the banks which were in excess of the goods as per its stock account. The discrepancy was in various items of grain, viz., barley, gram, bijhara, arhar, wheat and mutter. The Income Tax Officer determined the value of the excessive stocks at Rs. 25,406. The assessee was called upon to explain the above discrepancy and he gave the explanation that the discrepancy was due to the wrong naming of the grains by the bank authorities, that certain stocks of one Amar Singh were also pledged to the bank and that it was the general practice to declare 5 per cent.

excess grain. The explanation was not accepted. On appeal, the Appellate Assistant Commissioner restricted the addition to Rs. 25,406(?). It was further reduced by the Income Tax Appellate Tribunal to Rs. 16,736. The Tribunal accepted the explanation of the assessee in regard to the discrepancies relating to barley and bijhara but not those with regard to the other gains. The Income Tax Officer had also taken into consideration the drawings made by the partners from the firm which according to him were rather low compared with the number of members in the family and the living standards of the partners. Penalty proceedings were started and the Income Tax Officer imposed a penalty of Rs. 15,000. He relied on the discrepancy in the stock account and the certificate furnished by the bank about the pledging of the goods and on the meagre personal drawings of the partners. The Appellate Assistant Commissioner reduced the amount of penalty to Rs. 8,000. On second appeal, the Tribunal came to the conclusion that merely because the explanation given by the assessee had not been accepted by the taxing authorities it could not be held that the assessee had concealed the particulars of his income so as to make him liable to penalty u/s 28(1)(c) of the Income Tax Act, 1922. It came to the conclusion that as there was no positive evidence to bring home the default to the assessee, the penalty could not be levied.

3. The contention of learned counsel for the Commissioner is that in the circumstances of the case the certificate issued by the bank was sufficient positive evidence to prove that the assessee had concealed the particulars of his income so as to make him liable to penalty u/s 28(1)(c) of the Act. In our opinion, the certificate only went to show that the assessee had pledged goods with the bank in excess of the goods shown in his stock books, but the certificate was not sufficient to show that the assessee's stocks were not correctly maintained. The assessee's explanation about declaring goods pledged at a higher figure was not accepted and similarly his explanation about pledging of goods of Amar Singh was also not accepted. But, mere non-acceptance of the explanation, in the circumstances of the case, could not amount to proving that he had concealed the particulars of his income. It was held in the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, that in the absence of cogent material evidence, apart from the falsity of the respondent's explanation, from which it could be inferred that the respondent had concealed the particulars of his income or had deliberately furnished inaccurate particulars of such income, the penalty could not be imposed. In the circumstances of the case before us, we cannot hold that the Appellate Tribunal erred in law in holding that there is no positive evidence to establish the guilt of the assessee so as to make him liable to penalty u/s 28(1)(c) of the Act.

4. We accordingly answer the question referred to us in the affirmative. As the respondent has not appeared before us, we make no order as to costs. Counsel's fee is assessed at Rs. 200.