

(2003) 05 RAJ CK 0009

In the Rajasthan High Court

Case No : IT Ref. No. 32 of 1984 & IT Reference No. 32 of 1984 23 May 2003

Commissioner of Income Tax

APPELLANT

Vs

Balu Ram

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Voluntary Disclosure of Income and Wealth Act, 1976 — Section 14(1), 3(1)

Citation : (2003) 185 CTR 175

Hon'ble Judges : Y.R. Meena, J; Shashi Kant Sharma, J

Bench : Division Bench

Advocate : Parinitu Jain, for the Appellant; None, for the Respondent

Judgement

1. On an application u/s 256(1) of the IT Act, 1961, the Tribunal has referred the following question for the opinion of this Court :

"Whether, on the proper interpretation and in construction of the Voluntary Disclosure of Income and Wealth Act, 1976, the Tribunal was correct in holding that provisions of Sections 9 and 10 would not apply to a case of disclosure made u/s 14 of the said Act."

2. The assessee is a partner in the firm of M/s Madira Kraya Vikraya Sangh, Kota. In appeal filed by the firm, the Asstt. CIT allowed a loss of Rs. 12,91,250. The assessee was partner in the M/s Madira Kraya Vikraya Sangh. As loss has been allowed in the firm, the assessee's share also comes in the loss.

In the meantime, the assessee made a disclosure u/s 14(1) of the Voluntary Disclosure Scheme and paid taxes accordingly. The share of the loss which comes to the share of the assessee, that resulted in refund of the tax already paid. The assessee claimed that he is entitled for the refund of the part of the tax already paid. The application u/s 154 of the Act moved by the assessee was rejected, holding that the assessee was not entitled for refund. In appeal before the Tribunal, the Tribunal directed that the assessee would be entitled to refund only when the appeal of the firm was finally decided in favour of the firm. The

Tribunal directed that the assessee be granted a refund of tax under the Voluntary Disclosure Scheme in the event of the firm ultimately succeeding in its claim to allow the loss of Rs. 12,91,250.

3. None appeared for the assessee.

4. Heard Mrs. Parinitu Jain, learned counsel for the Revenue, Mrs. Jain submits that the similar question was referred by the Tribunal in 1995, in Ref. Nos. 20/83, 26/83, 35/83 and 27/83 the assessment years were also the same, i.e., 1968-69 to 1972-73. While answering that question, the reference was returned unanswered for want of finding as to whether the basic conditions for the applicability of either of two sections exist, and the matter was sent back to the Tribunal with a direction to hear the parties and decide the matter in accordance with the observations made above.

5. The relevant observations for the Tribunal made by this Court in its order dt. 8th Dec., 1998, read as under:

"While deciding this matter, the Tribunal has not considered the various conditions of Section 3 and Section 14 and has not given a finding as to whether the basic conditions for the applicability of either of the two sections exists. Even the date of search has not been mentioned nor it has been mentioned as to whether any of the items mentioned in Section 14(1) were seized as a result of search u/s 132. For the applicability of the provisions the conditions must be strictly fulfilled. If the declaration is considered u/s 14(1) then each of the conditions of that section must be considered to have been satisfied and then only it could be held that the declaration was made u/s 14(1). Since this basic finding has not been given and the matter has not been examined thoroughly in accordance with the various conditions stipulated for considering as to whether the declaration falls u/s 14(1) or Section 3(1), the reference is returned unanswered and the Tribunal is directed to hear the parties and decide the matter in accordance with the observations made above."

6. As the assessee was same, assessment years were same and the issues in question were also the same, we also return this reference unanswered, with a direction to the Tribunal to hear the parties afresh and after giving finding whether the provisions of Section 14(1) or Section 3(1) of the Voluntary Disclosure Scheme are applicable as directed by this Court in its order dt. 8th Dec., 1992, and decide the issue afresh. A copy of the order of this Court dt. 8th Dec., 1992, be kept on record.

The reference so made, stands disposed of accordingly.