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**(1986) 11 CAL CK 0010**

**In the Calcutta High Court**

**Case No : Income-tax Reference No. 551 of 1977**

Commissioner of Income Tax

APPELLANT

Vs

Bhagwan Ltd.

RESPONDENT

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**Date of Decision :** 25-11-1986

**Acts Referred:**

Income Tax Act, 1961 — Section 271(1)

**Citation :** (1987) 60 CTR 105 : (1987) 168 ITR 846 : (1987) 31 TAXMAN 161

**Hon'ble Judges :** Monjula Bose, J; Dipak Kumar Sen, J

**Bench :** Division Bench

**Advocate :** H.M. Dhar and Sunil Mukharji, for the Appellant; A. Roy Chowdhry, for amicus curiae, for the Respondent

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## **Judgement**

Dipak Kumar Sen, J.—Bhagwan Ltd., the assessee, was assessed to Income Tax for the assessment years 1959-60 and 1961-62, the relevant accounting years being the calendar years 1958 and 1960. The original assessments were completed on February 23, 1962, and January 31, 1963. The said assessments were subsequently modified on appeal before the Appellate Assistant Commissioner.

2. Subsequently, the Income Tax Officer initiated proceedings u/s 147(a) of the Income Tax Act, 1961 (" the Act"), on the ground that the assessee's income chargeable to tax has escaped assessment. In compliance with the notices issued u/s 148 of the Act, the assessee filed fresh returns of income. The Income Tax Officer held that a number of short-term loans and advances recorded in the accounts of the assessee were not genuine and the said amounts represented the assessee's concealed income. It was found that the alleged creditors had been carrying on the business of issuing spurious hundis. Accordingly, the Income Tax Officer treated the entire amount of the loans and advances as the assessee's income from other sources and the same was brought to tax. The deduction of interest claimed to have been paid by the assessee against the said transactions was disallowed.

3. Being aggrieved, the assessee preferred appeals from the said orders of assessment before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner confirmed the addition made in the assessment year 1959-60 and in the subsequent assessment year 1961-62. The Appellate Assistant Commissioner enhanced the income by Rs. 20,000 on the ground that the peak amount introduced in the accounts of the assessee as loans had not been correctly computed.

4. In the meantime, the Income Tax Officer initiated proceedings for imposing penalty on the assessee u/s 274 read with section 271 of the Act thereof. As the minimum penalty imposable in each of the years was thought to exceed Rs. 1,000, the Income Tax Officer referred the matter to the Inspecting Assistant Commissioner. The Inspecting Assistant Commissioner imposed penalties respectively of Rs. 2,07,438 and Rs. 1,63,457 in respect of the said assessment years.

5. Against the orders of the Appellate Assistant Commissioner upholding and enhancing the quantum of additions in the reassessment proceedings, the assessee preferred appeals before the Tribunal. The Tribunal found on the facts that the reasons for which the Income Tax Officer had reopened the assessments were not adequate and did not satisfy the requirements of Section 147. The Tribunal accordingly set aside the orders of reassessment without going into the merits of the matter.

6. The assessee also filed appeals to the Tribunal against the orders of the Inspecting Assistant Commissioner imposing the penalty. The Tribunal found that as the reassessments for the said two assessment years made u/s 147 on the basis of which penalties had been levied had been annulled, the penalties could not stand. The Tribunal directed cancellation of the orders of penalty.

7. On an application of the Revenue u/s 256(1) of the Act, the following question has been referred as a question of law arising out of the order of the Tribunal for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the tribunal was justified in cancelling the penalties imposed u/s 271(l)(c) of the Income Tax Act, 1961 ?"

8. It appears that the orders of reassessment on the basis of which penalties were levied on the assessee had been set aside by the Tribunal. Therefore, the order of penalty cannot stand by itself. In spite of opportunities given to the Revenue, we have not been informed whether against the order of the Tribunal setting aside the orders of reassessment, any further proceedings have been initiated by the Revenue. In the absence of any such information, we have to presume that the orders of reassessment stand annulled finally. The question is, therefore, answered in the affirmative and in favour of the assessee.

9. There will be no order as to costs.

Monjula Bose, J.

10. I agree.