(2007) 09 JH CK 0028

In the Jharkhand High Court

Commissioner of Income Tax — APPELLANT

Vs

Binod Kumar and Bros. — RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:
Income Tax Act, 1961 — Section 201, 221, 256

Citation : (2008) 1 JCR 404 : (2008) 170 TAXMAN 72

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Judgement

M.Y. Eqbal, J.—This is a reference u/s 256 of the Income Tax Act, 1961, whereby the following question has been referred by the Tribunal for answer by this Court:

Whether on the facts and in the circumstances of the case, Income Tax Appellate Tribunal was justified in law to hold that no tax deduction at source is required where final assessment of the person from whose account such tax deduction at source is applicable results in Nil demand, less demand or a refund?

2. The facts of the case lie in a narrow compass:

Because of the failure on the part of the assessee to deduct tax at source from interest paid to several parties, the assessing officer imposed penalty amounting to Rs. 1000/-, Rs. 5000/- and Rs. 10000/- for the assessment years 1985-86, 1986-87 and 1987-88. Aggrieved by the said order of penalty, the assessee took up the matter in appeal before the Commissioner, Income Tax (Appeal). The appellate authority allowed the appeal in part. The appellate authority assessed interest under Sub-section (1A) of Section 201 in case of two creditors, namely, Dr. Pradeep Kr. Agarwal and Shri Lakhanlal Agarwal. According to the appellate authority, unlike penalty u/s 221 for charging of interest u/s 201(1A) is mandatory. Aggrieved by the part of the relief allowed to the assessee, the Revenue preferred Second Appeal before the Income Tax Appellate Tribunal contending inter alia that the order of C.I.T. (Appeal) in deleting penalty u/s 221 for these years without assigning any reasons is not justified. The Tribunal affirmed the order passed by the C.I.T. (Appeal) and held that imposition of penalty was unjustified.

3. We have heard Mr. K.K. Jhunjhunwala, learned Counsel appearing for the Revenue, and Mr. Binod Poddar, Senior Counsel appearing for the assessee.

4. The admitted facts are that the assessment of Dr. Pradeep Kr Agarwal and Shri Lakhanlal Agarwal for the assessment years 1985-86, and 1987-88 resulted in nil demand. In that case, even if the assessee would have deducted such tax on the interest paid during the said years, it will not amount to refund and in that way, there is no loss of revenue or prejudice caused to the Revenue for non-deduction of tax at source for those two assessment years.

5. Besides the above, as per the circular issued by the Central Government putting a ceiling on the amount for which reference may be made and also having regard to the decisions of the Government not to make reference in such cases where amount is less than Rs. 50000/-. In that view of the matter also, we do not find any reason to answer the reference.

D.G.R. Patnaik, J.

6. I agree.