(1976) 03 OHC CK 0031

In the Orissa High Court

Case No : S.J.Cs. No''s. 35 to 37 of 1974

Commissioner of Income Tax APPELLANT

Vs

Biswanath Ghosh RESPONDENT

Date of Decision : 30-03-1976

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 271(1)

Citation : (1976) 42 CLT 1287

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Judgement

R.N. Misra, J.—Being called upon by the Court by order dt. 13.8.1975 on an application made by the Revenue u/s 256(2) of the Income Tax Act of 1961 (hereinafter referred to as the ''Act''), the Income Tax Appellate Tribunal, Cut tack, Bench, has stated a case and referred the following question for opinion of the Court:.

Whether on the facts and circumstances of the case, the learned Tribunal was justified in upholding the order of the Appellate Assistant Commissioner cancelling the levy of penalty u/s 271(1)(a) of the Act?

2. The relevant years of assessment are 1964-65, 1965-66 and 1966-67. Returns for the aforesaid years were due before 1st of October, 1964, 1st of October, 1965 and 1st October, 1966 respectively. Returns were, however, filed on 14-12-1969, 1-9-1969 and 30-9-1969 respectively for the aforesaid years. The Income Tax Officer initiated proceedings u/s 271(1)(a) of the Act, called upon to Assessee to show cause as to why penalty may not be levied and after rejecting the explanation furnished by the Assessee imposed penalties of various amounts for the said years.

3. Before the Appellate Assistant Commissioner, Assessee urged that the share income from the firm messrs Nilamani Ghosh and Partners was the only income in respect of which Assessee had liability to make a return under the Act. The

firm had not finalised its accounts for the aforesaid three years and had not intimated the Assessee as to what his share income would be. In the circumstances, Assessee was not in a position to make his returns. It was further pointed out that the Assessee filed the returns without loss of any time and firm''s returns and Assessee''s returns were almost simultaneous. The Appellate Assistant Commissioner found that the explanation was genuine and germane and accordingly cancelled the penalty.

4. Revenue appealed before the Appellate Tribunal and contended that merely because the books of account of the firm had not been closed before expiry of the statutory period no reasonable cause existed for the delay in filing of Assessee''s own returns. On the side of the Assessee, it was contended that Nilamani Ghosh who was the managing partner of the firm was lying seriously ill and ultimately succumbed to his illness on 14-9-1967. He was in over all personal charge of the business and on account of his protracted illness the firms business activities had been topsy turvied. It was further pointed out that Nilamani Ghosh was the major partner and Assessee had very small interest. Therefore, Assessee was not in a position to - control the activities and delinquency of the firm. The Tribunal found the contentions of the Assessee to be true as a fact. It was further found that there was no evidence to show that Assessee had knowledge of the correct figures of his share income in the firm and therefore, was in a position to file returns of his income before being communicated the exact figures. These in the opinion of the Tribunal, justified cancellation of the penalty by the appellate Assistant Commissioner. Accordingly the appeal was dismissed- and the order vacating imposition of penalty was sustained. Thereupon the Revenue moved the Tribunal to state a case and having failed made an application before this Court in the manner already indicated.

5. It is unnecessary to repeat the facts which have already been noticed. One further fact which transpires from the record and may be useful is that the firm had similarly been visited with penalties and when the tribunal in appeal by the firm cancelled the imposition of penalty, this Court declined to interfere. See S.J.C.S. Nos. 111-113 of 1974 disposed of on 2-2-1975.

6. Learned Standing counsel reiterates the stand of the Revenue-namely merely because the firm''s accounts have not been finalised, no reasonable excuse is available to the defaulting Assessee in the matter of filing of his return. On the other hand, Assessee''s counsel relies upon three decision in his support. See Venkateswar power Rolling Mills v. C.I.T. (1974) 971.T.R. 163; I..T. Commissioner v. Raja Ram 1973 Tax. L.R. 695 and C.I.T. v. Baijnath Chopolia (1976) 102 J.T.R. 551. In the last of these cases, this Court in similar circumstances refused to uphold the contention of the Revenue. In these circumstances we are of the view that the Tribunal was right in accepting the Stand of the Assessee that there existed reasonable cause which prevented the Assessee from filing the returns within the prescribed time.

7. Our answer to the question referred therefore is:

On the facts and circumstances of the case, the learned tribunal was justified in upholding the order of the appellate Asst. Commissioner cancelling the levy of penalty u/s 271(1)(a) of the Act. We make no direction for costs.

N.K. Das, J.

8. I agree.

