
(1990) 04 AHC CK 0011

In the Allahabad High Court

Case No : Income-tax Application No. 344 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Chaubey and Co.

RESPONDENT

Date of Decision : 06-04-1990

Acts Referred:

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

Citation : (1990) 185 ITR 309

Hon'ble Judges : R.K. Gulati, J;A.P. Misra, J

Bench : Division Bench

Advocate : Bharatji Agrawal, for the Appellant; S.B.L. Srivastava, for the Respondent

Judgement

R.K. Gulati, J.—This application u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), is filed at the instance of the Commissioner of Income Tax, Allahabad, Four questions have been proposed in this application. The sum and substance of these questions is whether the Income Tax Appellate Tribunal erred in confirming the order passed by the Appellate Assistant Commissioner of Income Tax by which he deleted the penalty u/s 271(1)(a) of the Act imposed on the assessee. The concurrent findings recorded by the appellate authorities are that it is not a fit case for imposition of penalty as the assessee had reasonable cause for not filing its return of income within the time specified u/s 139(1) of the Act. It is these findings which have been challenged by the Revenue in these proceedings.

2. We have heard Sri Bharatji AGRAWAL, senior standing counsel appearing for the Revenue, and Sri S.B.L. Srivastava, appearing for the assessee.

3. For the Revenue, it was contended that, in order to sustain a penalty u/s 271(1)(a), the element of mens rea was not required to be established by the Revenue and, therefore, the Tribunal erred in directing the deletion of the penalty imposed on the assessee. We were invited to a decision of the Supreme Court in Gujarat Travancore Agency, Cochin Vs. Commissioner of Income Tax, Kerala,

Ernakulam, and in particular to the following observations appearing in the judgment (at page 458) :

". . . there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision . . . We hold that the element of mens rea was not required to be proved in the proceedings taken by the Income Tax Officer u/s 271(1)(a) of the Income Tax Act against the assessee for the assessment years 1965-66 and 1966-67."

4. Having considered the matter carefully, we are of the opinion that the decision relied upon by learned standing counsel is distinguishable and has no application to the facts of the present case. For not filing the return in time, the explanation given by the assessee was that the tax deducted at source and the tax paid by way of advance tax was much more than the tax which was required to be paid by the assessee and in the circumstances, it thought that it was not necessary for it to file the return of its income. Moreover, this was the first year of the assessee's business. It is in these circumstances that the return was filed a little late. This explanation of the assessee was accepted by the first, appellate authority as well as by the Income Tax Appellate Tribunal. The Tribunal remarked :

". . . since the entire tax payable by the assessee had been deducted at source, we are inclined to accept, that the assessee had a bona fide belief that he will not be required to file the return. We accordingly decline to interfere with the order of the Appellate Assistant Commissioner."

5. As the explanation for not filing the return in time was found acceptable to the Income Tax Appellate Tribunal, that was the end of the matter. It is not a case where the penalty was cancelled on the ground that the Revenue was required to prove mens rea on the part of the assessee before it could validly impose the penalty on the assessee. That being so, in our opinion, the Tribunal did not commit any error of law when it directed that it was not a fit case for imposition of penalty. Whether the explanation given by the assessee was acceptable or not is essentially a question of fact. It is not a case which, in our opinion, gives rise to any question of law.

6. The application u/s 256(2) is without any merit and is, accordingly, rejected with costs.