
(1982) 06 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 66 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Devkinandan Bhandari

RESPONDENT

Date of Decision : 30-06-1982

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1983) 35 CTR 44 : (1983) 144 ITR 178 : (1982) 11 TAXMAN 149

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; None, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the I.T. Act, 1961, the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and circumstances of the case, and in view of the Explanation to Section 271(1)(c) as it then existed, the Tribunal was justified in reducing the quantum of penalty to an amount less than the difference between the assessed and the returned income ?"

2. The material facts giving rise to this reference briefly are as follows:

3. For the assessment year 1971-72, the assessee filed a return disclosing income of Rs. 4,560. The ITO, however, assessed the income at Rs. 40,000 and initiated proceedings u/s 271(1)(c) of the Act. The explanation submitted by the assessee was not accepted by the IAC to whom the reference was made. He held that the assessee had concealed income to the extent of Rs. 35,440 and a penalty of Rs. 35,500 was accordingly levied on the assessee. On appeal, the Tribunal held that the penalty imposed was excessive inasmuch as, from the material on record, concealment of income, of Rs. 10,440 was proved beyond reasonable doubt. Aggrieved by the order passed by the Tribunal, the Department sought a reference and it is at the instance of the Department that

the aforesaid question has been referred to this court for its opinion.

4. Shri Mukati, the learned counsel for the Department contended that the Tribunal could not reduce penalty which was less than the income assessed in the assessment proceedings. The learned counsel for the Department relied on the decision of this court in Addl. Commissioner of Income Tax Vs. Dr. V.V. Shrivastava, . That decision, however, is distinguishable, on facts. In that case, the question for consideration turned on the construction of Clause (iii) of Section 271(1)(c) of the Act as it existed prior to 1968. That clause was substituted by the Finance Act, 1968, with effect from 10th April, 1968, by the following clause ;

" In the cases referred to in Clause (c) in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished."

5. The above clause was later on substituted by another, clause, but so far as the present reference is concerned, we are concerned with the relevant Clause (iii) of Section 271(1) of the Act, which was substituted by the Finance Act, 1968. The Tribunal, therefore, was required to determine the amount of income in respect of which the particulars had been concealed or inaccurate particulars had been furnished. The Tribunal had to give a finding in that behalf in the penalty proceedings. In this connection, we may usefully refer to the following observation in Addl. Commissioner of Income Tax Vs. Dr. V.V. Shrivastava, .

"It is true that in penalty proceedings it may be open on the question of concealment of income to accept an explanation which may have been rejected in the assessment or to reject an item as not amounting to income which may have been accepted as income in the assessment."

6. We respectfully agree with the aforesaid observation. The Tribunal had thus jurisdiction to ascertain in the penalty proceedings, the amount of income concealed in the assessment. There was material before the Tribunal on the basis of which it came to the conclusion that the income concealed was Rs. 10,440. This is a finding of fact. In view of this finding, the Tribunal was justified in reducing the quantum of penalty.

7. Our answer to the question referred to us, is therefore, in the affirmative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.