(1991) 08 PAT CK 0020

In the Patna High Court

Case No : Taxation Case No. 58 of 1982

Commissioner of Income Tax APPELLANT

Vs

Dr. Sidheshwar Pd. Singh RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

Citation : (1991) 08 PAT CK 0020

Judgement

G.C. Bharuka, J.—This reference arises out of an order passed by this court pursuant to Section 256(2) of the Income Tax Act, 1961, calling upon the Tribunal to state and refer the following question of law :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in cancelling the penalty order u/s 271(1)(c) of the Income Tax Act, 1961?"

2. In this case, the assessee is a doctor. The relevant assessment year is 1973-74. The assessee declared his net professional income at Rs. 4,500. But the Income Tax Officer assessed his professional income at Rs. 19,779, which, on appeal to the Appellate Assistant Commissioner, was reduced to Rs. 15,779. The enhancement in the income was made on the basis of estimate. The assessee went in second appeal before the Tribunal but could not get any further relief and the appeal was dismissed.

3. The Income Tax Officer initiated penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961, and in view of the Explanation to the said section, after hearing the assessee on notice, imposed Rs. 11,280 as penalty. The appeal of the assessee to the Appellate Assistant Commissioner failed. The assessee preferred second appeal to the Tribunal. The Tribunal, on consideration of the entire facts of the case and the materials on the record, accepted the explanation of the assessee for the purpose of penalty proceedings and, keeping in view the various High Court decisions, cancelled the penalty order.

4. While allowing the appeal, the Tribunal, inter alia, accepted the plea of the

assessee that no penalty can be imposed on the basis of estimated additions as it cannot be said that the assessee had actually concealed any income.

5. Recently, the Supreme Court, in the case of Commissioner of Income Tax Vs. Mussadilal Ram Bharose, , has examined the question involved in the present case and has held that (at page 22) :

" The position, therefore, in law is clear. If the returned income is less than 80 per cent. of the assessed income, the presumption is raised against the assessee that the assessee is guilty of fraud or gross or wilful neglect as a result of which he has concealed the income but this presumption can be rebutted. The rebuttal must be on materials relevant and cogent. It is for the fact-finding body to judge the relevancy and sufficiency of the materials. If such a fact-finding body, bearing the aforesaid principles in mind, comes to the conclusion that the assessee has discharged the onus, it becomes a conclusion of fact. No question of law arises. In this case, the Tribunal has borne in mind the relevant principles of law and has also judged the facts on record. It is not a case that there was no evidence or there was such evidence on which no reasonable man could have accepted the explanation of the assessee. In that view of the matter, in our opinion, the Tribunal rightly rejected the claim for reference u/s 256(1) and the High Court correctly did not entertain the application for reference u/s 256(2) of the Act."

6. In the present case as well, no case has been made out by the Department to show that the finding of facts arrived at by the Tribunal was not sustainable on the ground that the finding of fact is based on irrelevant materials or that the finding of fact has been arrived at by ignoring the relevant materials. Nothing has been placed on record to show that the finding of fact of the Tribunal is perverse in the sense that, on the facts of the case, no reasonable man can arrive at a finding at which the Tribunal has arrived.

7. In this view of the matter, the finding of the Tribunal appears to be a finding of fact and no question of law arises out of the impugned order of the Tribunal for a reference under the provisions of Section 256 of the Income Tax Act, 1961. In my view, the reference itself is incompetent and, accordingly, rejected. Under the circumstances of the case, there will be no order as to costs.

8. Let a copy of this judgment be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, Patna Bench, Patna, in terms of Section 260 of the Income Tax Act, 1961.

B.C. Basak, C.J.

9. I agree.

