(1997) 01 PAT CK 0008

In the Patna High Court

Case No : Tax Case No. 55 of 1985

Commissioner of Income Tax APPELLANT

Vs

Gumla Traders RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Income Tax Act, 1961 — Section 143, 144, 147, 256(2), 271(1)(c)

Citation : (1998) 98 TAXMAN 212

Hon'ble Judges : D.P.Wadhwa, C.J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : L.N. Rastogi and S.K. Sharan, for the Appellant;

Judgement

1. At the instance of the revenue, on an application filed u/s 256(2) of the income tax Act, 1961 (''the Act''), the Tribunal, Patna Bench, has referred to this Court the following question of law for its decision, which pertains to the assessment year 1972-73 : "Whether, on the fats and in the circumstances of the case, the Appellate Tribunal was legally correct in cancelling the penalty of Rs. 19,270 imposed upon the assessee u/s 271(1)(c) of the income tax Act, 1961 ?"

In the quantum appeal, it was found that there was deposit in the books of the assessee for a sum of Rs. 34,000 in the name of one Shri Mahesh Prasad. The ITO added this amount in the income of the assessee treating the same to be unexplained. The AAC on appeal by the assessee accepted the genuine character of Rs. 15,000 out of this amount as having been deposited by said Mahesh Prasad, but confirmed the addition of the balance amount of Rs. 19,000. This order of the AAC, was upheld by the Tribunal. Thereafter, the ITO instituted the proceedings for levying penalty u/s 271(1)(c) of the Act, on the basis of the addition of the amount of Rs. 19,000 and imposed the penalty of Rs. 19,270 on the assessee. This penalty was confirmed in appeal by the assessee by the AAC. But on further appeal by the assessee, the Tribunal deleted the penalty so imposed. In deleting the penalty the Tribunal, it appears, relied on a decision of this Court in the case of CIT v. Chotanagpur Glass Works [1984] 145 ITR 225/ 17 Taxman 356. 2. Mr. Rastogi submits that this decision of the Patna High Court was reversed by a subsequent Full Bench decision of this court in CIT v. Nathulal Agarwala & Sons [1985] 153 ITR 292 / 22 Taxman 199. He also relied on a decision of the supreme Court in Commissioner of Income Tax (Additional), Lucknow Vs. Jeevan Lal Sah, to support his submission.

The relevant portion of the decision given by the Tribunal, in appeal, in proceeding u/s 271(1)(c) is as under:

"We have given our due consideration to the arguments of both the sides. It is established on record and it is also accepted by the Tribunal in the quantum appeal that Sri Mahesh Pd. had a small business and he had some income. He has also made disclosure which was accepted by the Department. Apart from the amount introduced by him has been accepted as genuine by AAC and Tribunal. It cannot thus be held new that Sri Mahesh Pd. was not a genuine person or that he had not introduced the money. His known source of income may have been enough to justify the genuineness to the extent of Rs. 15,000 only, but for the rest of the amount introduced in his name his known source of income may not have been adequate but as for as the assessee is concerned, the onus of proof is discharged. Once the genuine character of the creditor is proved and also the fact that he had a source of income, it cannot be held that the assessee had introduced its own money in the name of Sri Mahesh Prasad for the purpose of levy of penalty u/s 271(1)(c). There may have been some facts in the statement of Sri Mahesh Pd. which may threw a doubt on the accuracy of his version but all the same the statement of Sri Mahesh Prasad has been partly accepted by the AAC and by the Tribunal in quantum appeal. We are of the opinion that it is not a fit case for levy of penalty u/s 271 (1)(c)."

3. u/s 271(1)(c), if the income tax authority is satisfied that if a person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay the penalty on the sum which shall not be less than one, 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.

4. The Explanation as given in section 271(1)(c) reads as under :-

" Explanation - Where the total income returned by any person is less than eighty per cent of the total income (hereinafter in this Explanation referred to as the correct income) as assessed u/s 143 or section 144 or section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of clause (c) of this subsection."

5. If we read the Explanation, it has to be presumed that if the total returned income by any person is less than 80 per cent of the total income, such parson shall, unless he proves that the failure to return the correct income did not suffer from any fraud or any gross or wilful negligent on his part, be deemed to have concealed the particulars of his income.

6. In the present case, we find that the Tribunal has fell into error of law is not relying on the explanation, and rather merely depending on the substantive provision of section 271(1)(c). Further, it relied on the decision of this Court in Chotanagpur Glass Works'' case (supra), which has now been overruled. We, therefore, answer the question in the negative, i.e., in favour of the revenue and against the assessee. Since the assessee has not been represented, there will be no order as to costs.

