(1987) 01 BOM CK 0083

In the Bombay High Court

Case No : Income-tax Reference No. 464 of 1975

Commissioner of Income Tax APPELLANT

Vs

Haji Gaffar Haji Dada Chini RESPONDENT

Date of Decision : 20-01-1987

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

Citation : (1987) 33 CTR 130 : (1988) 169 ITR 33

Hon'ble Judges : M.H. Mohta, J;Bharucha, J

Bench : Division Bench

Judgement

Mohta, J.—The following question is referred u/s 256 of the Income Tax Act, 1961, at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the assessee''s letter dated July 16, 1971, amounted to admission of concealment of income of Rs. 60,00 ?"

2. Basic factual background is this. After completing the assessment, it came to light that in the account books some money was introduced. On explanation being sought, the assessee wrote a letter dated July 16, 1971, offering credits in respect of hundi loans for taxation, stating :

"I offer this (Rs. 60,000) for taxation. The penalty may be decided on merits."

3. The reassessment was completed on December 8, 1971. The Income Tax Officer stated in the assessment order that he was satisfied that it was a fit case for initiation of penalty proceedings u/s 271(1)(c) and accordingly he issued a notice. The matter was referred to the Inspecting Assistant Commissioner. The explanation dated September 17, 1973, was offered stating, inter alia, "Assessee being not able to prove the those credits." Durga Timber Works Vs. Commissioner of Income Tax, , levied penalty of Rs. 10,000. Aggrieved by the order of the Inspecting Assistant Commissioner, the Income Tax Appellate Tribunal was approached. The principal contention of the assessee before the

Tribunal was that the letter addressed to the Income Tax Officer did not amount to an admission of concealment of income, though the wording in the said letter was that penalty may be decided on merits, but that did not mean that the assessee had accepted Rs. 60,000 as his concealed income. The Tribunal accepted the contention of the assessee that there was no material about concealment of income and the letter did not amount to an admission of concealment of income. In that view of the matter, the order of imposition of penalty was quashed, relying on the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, and the decision of the Punjab and Haryana High Court in Gumani Ram Siri Ram Vs. Commissioner of Income Tax, .

4. Mr. Jetly, learned counsel for the Revenue, inviting our attention to the background of the case and the statement that penalty may be decided on merits in the letter, contended that this implies an admission of concealment of income but for which the question of imposition of penalty would not have arisen. It seems to us that the submission is too technical to be accepted, specially when, considering the whole background, the Tribunal has taken one view of the matter which is a possible view. Under the circumstances, we see no reason to interfere with the order of the Tribunal.

5. In conclusion, the question is answered in the negative and against the Revenue. No order as to costs.