
(1990) 11 AHC CK 0116

In the Allahabad High Court

Case No : Income-tax Reference No. 1026 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Inamullah

RESPONDENT

Date of Decision : 20-11-1990

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(2), 139(4), 271(1)

Citation : (1991) 188 ITR 583

Hon'ble Judges : B.P. Jeevan Reddy, C.J;V.N. Mehrotra, J

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, C. J.

1. u/s 256(2) of the Income Tax Act, 1961, the Tribunal has stated the following question :

"Whether, on the facts and in the circumstances of the case the Tribunal was legally justified in canceling the penalty without recording a finding that there was reasonable cause for the delay in furnishing the return ?

2. The assessee is a firm. It was constituted on April 1, 1968. For the assessment year 1969-70, which was the first assessment year for it, it did not file the return on or before September 30, 1969, the prescribed date. It filed the return on October 27, 1970, i.e., with a delay of more than twelve months. On account of this delay, a notice u/s 271(1)(a) of the Act was issued to him. The assessee, in his explanation, merely relied upon the decision of the Supreme Court in Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd., . He submitted that the return filed by it should be treated as one u/s 139(4), that it was a valid return and was so treated and acted upon by the Income Tax Officer and hence no penalty is leviable. He did not indicate any reasons for the delay in submission of the return. In the circumstances, the Income Tax Officer levied a penalty which was confirmed in appeal. The Tribunal, on further appeal, set aside the penalty on a reasoning which appears to us to be

not in accordance with law. This is all what they said in para 4 :

"4. We have considered the rival contentions carefully. In the instant case, no notice u/s 139(2) was issued and the assessee had voluntarily filed the return and the return filed by it was found to be quite correct. In the circumstances of the case, it was quite evident that the assessee did not wish to evade tax. We hardly think it to be a proper case for the levy of penalty u/s 271(1)(a). Hence, we cancel the penalty."

3. The question is not whether the assessee wished to evade tax but the question is whether he furnished any explanation for the delay in filing of the return. Merely because a return was filed and entertained under subsection (4) of Section 139, it does not relieve him or exonerate him from the liability to pay penalty u/s 271(1)(a) or of his obligation u/s 139(1). What is relevant is that he submitted no explanation except that he filed the return u/s 139(4) and no penalty was leviable. The Tribunal erred in deleting the penalty. It may be that it was the first year of the business of the assessee. It may also be that the return filed by him had been accepted but those facts may be relevant on the question of quantum, if any, but in the absence of any explanation whatsoever, the Tribunal was in error in setting aside the penalty. For the above reasons, the question referred is answered in the negative, i.e., in favour of the Revenue and against the assessee. No costs.

4. At the same time, however, we are of the opinion that since the order of the Tribunal is vitiated in law by adoption of a wrong approach, it may be open to the Tribunal to reconsider the matter in the light of the observation made in this judgment and pass final orders u/s 260 of the Act