(1995) 09 AHC CK 0149

In the Allahabad High Court

Case No : IT Reference No. 52 of 1980

Commissioner of Income Tax — APPELLANT

Vs

Jagdish Saree Bhandar — RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:
Income Tax Act, 1961 — Section 148, 256(1), 256(2), 271(1)(c), 274

Citation : (1996) 84 TAXMAN 92

Hon'ble Judges : V.N. Khare, J;M. Katju, J

Bench : Division Bench

Judgement

1. This is an income tax reference u/s 256(2) of the income tax Act, 1961 (''the Act'') at the instance of the department. We have heard Shri Shekhar Srivastava, the learned standing counsel for the department. None appears for the assessee.

2. The reference relate to the assessment years 1968-69 and 1969-70. The assessee is a firm. The assessment for the assessment year 1968-69 was originally made on total income of Rs. 28,200 - on 16-7-1971 and for the assessment year 1969-70 on total income of Rs. 39,200 - on 12-8-1971. Thereafter a search was conducted in the business premises of the assessee on 21-4-1973. Notice u/s 148 of the Act was issued for both the assessment years. The assessee in the returns filed in reply to the notice u/s 148 disclosed a further income of Rs. 35,110 for the assessment year 1968-69 and a further income of Rs. 28,000 for the assessment year 1969-70. The ITO in the course of the supplementary assessment proceedings initiated action for penalty u/s 271(1)(c) of the Act. The matter was referred to the IAC under sub-section (2) of section 274 of the Act. The IAC was of the opinion that the assessee had concealed his income and hence, he imposed penalty of Rs. 25,100 for the assessment year 1968-69 and a penalty of Rs. 28,000 for the assessment year 1969-70. Aggrieved, the assessee went up in appeal before the Tribunal and the Tribunal cancelled the penalties imposed by the IAC and allowed the assessee''s appeal. The department then filed application u/s 256(1) which was rejected. But

the application u/s 256(2) was allowed and the following questions were referred for our opinion :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the assessee did not conceal any income and could not be held guilty of concealment in terms of Explanation to section 271(1) (c) of the income tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in cancelling the penalty of Rs. 35,100 for the assessment year 1968-69 and Rs. 28,000 for the assessment year 1969-70 imposed by the Inspecting Assistant Commissioner ?

We have carefully perused the appellate order of the Tribunal. The Tribunal after a detailed discussion of the facts of the case has recorded a finding of fact that the assessee did not conceal any income nor it filed inaccurate particulars of income. In view of this finding of fact, we are of the opinion that there is no infirmity in the order of the Tribunal. We, therefore, answer the questions referred to us in favour of the assessee and against the department. There shall be no order as to costs.