
(2000) 03 RAJ CK 0024

In the Rajasthan High Court

Case No : Income Tax Reference No's. 69 to 72 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Laxmi Chand

RESPONDENT

Date of Decision : 14-03-2000

Acts Referred:

Income Tax Act, 1961 — Section 132, 143(3), 147, 256, 256(1)

Citation : (2001) 249 ITR 398 : (2000) 112 TAXMAN 393

Hon'ble Judges : Rajesh Balia, J; Mohd. Yamin, J

Bench : Division Bench

Advocate : Sundeep Bhandawat, for the Appellant; Rajendra Mehta, for the Respondent

Judgement

1. These four applications u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), are directed against the order dated December 29, 1997, passed by the Income Tax Appellate Tribunal, Jaipur, in Reference Applications Nos. 201 of 1997, 202 of 1997, 203 of 1997 and 204 of 1997 filed by the applicant Commissioner of Income Tax, Jodhpur, in respect of different assessment years levying penalty against the assessee-respondent.

2. The brief facts of the case are : that a search u/s 132 of the Act was conducted from December 12, 1986, to December 15, 1986, at the premises of Pannalal, the father of the respondent-assessee. During the course of that search, certain incriminating documents relating to the assessee's income were found there, which were seized and sealed. Thereafter, the assessee filed the revised returns of income for the four assessment years 1982-83, 1983-84, 1984-85 and 1985-86, respectively. The assessments were completed u/s 143(3)/147 of the Act on February 8, 1988, and proceedings u/s 271(1)(c) of the Act were also initiated for levy of penalty for concealment of income and/or particulars of the income. For two assessment years, the orders of penalty made by the Assessing Officer were affirmed by the Deputy Commissioner (Appeals) against which the assessee preferred appeals before the Tribunal and for two

assessment years, the orders of penalty were set aside by the Commissioner (Appeals), against which the Revenue filed appeals before the Tribunal. The Tribunal accepted the appeals of the assessee and also rejected the appeals of the Revenue relying on the circular issued by the Central Board of Direct Taxes floating the amnesty scheme in voluntary disclosure and issuing clarifications about the scheme to those assesseees who voluntarily disclose their income, which promised amnesty from penalties. The principal ground on which the Tribunal relied on is that where search is authorised against one person and any document or valuable articles or assets of a person other than the person against whom search has been authorised, are seized from the premises where search has been authorised, he cannot be considered to be a person against whom search has been conducted and he does not fall within the purview of the person against whom concealment is detected until a finding to that effect is reached by the authority concerned in appropriate proceedings. Such a person is not excluded from the purview of availing of the benefit of amnesty scheme.

3. The Commissioner of Income Tax made an application u/s 256(1) of the Act before the Income Tax Appellate Tribunal raising four questions alleged to be the questions of law arising out of the Tribunal's appellate order for referring the same to this court for its opinion, which are as follows :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally justified in finding that the case of the assessee is covered under the amnesty scheme and that no penalty is leviable in the assessee's case u/s 271(1)(c) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally justified in observing that the Department as a whole has accepted the contention of the assessee regarding filing of the returns under the amnesty scheme while processing the case for waiver of interest ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally justified in not accepting the contention of the Department that search in the case of Sh. Pannalal, the assessee's father, was also a search in the case of the assessee ?

4. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally justified in finding that the case of the assessee is covered by questions Nos. 7 and 19 of Circular No. 431 and answers to such questions ?"

4. However, the Tribunal rejected the application filed u/s 256(1) of the Act by the Revenue holding that no question of law arises and the questions sought to be referred by the Revenue are questions of fact or at any rate the answer to them is self-evident. This application u/s 256(2) of the Act is by the Revenue.

5. Having heard learned counsel for the parties, we are of the opinion that the Tribunal has erred in rejecting the application u/s 256(1) of the Act filed by the

Revenue inasmuch in our opinion, the Tribunal's order in appeal does give rise to questions of law about interpreting the scope and ambit of the amnesty scheme and the circular issued by the Central Board of Direct Taxes and its applicability to the assessee in the facts and circumstances of the present case. The controversy referred to above cannot be considered as one to which answer is self-evident.

6. In our opinion, the following two questions of law arise from the Tribunal's orders in each case, which shall sufficiently cover the controversy raised in these proceedings :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally justified in finding that the case of the assessee is covered under the amnesty scheme and that no penalty is leviable in the assessee's case u/s 271(1)(c) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally justified in finding that the case of the assessee is covered by questions Nos. 7 and 19 of Circular No. 431 and answers to such questions ?"

7. Accordingly, these applications u/s 256(2) of the Act are allowed. The Tribunal is directed to submit a statement of the case and to refer the aforesaid two questions of law to this court for its opinion.