
(2005) 04 AHC CK 0044

In the Allahabad High Court

Case No : IT Reference No. 117 of 1994 25 April 2005

Commissioner of Income Tax

APPELLANT

Vs

Manmohan Goel

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Income Tax Act, 1961 — Section 132, 256, 271

Citation : (2005) 149 TAXMAN 578

Hon'ble Judges : Rajes Kumar, J; R.K. Agrawal, J

Bench : Full Bench

Advocate : Shakeel Ahmad, for the Appellant;

Judgement

1. The Income Tax Appellate Tribunal, New Delhi has referred to following question of law u/s 256(2) of the Income Tax Act, 1961 ("the Act") for opinion of this Court:

"Whether in the facts and in the circumstances of the case the ITAT was justified in holding that conditions laid down in Explanation 5(2) to section 271(1)(c) were fulfilled and no penalty was leviable u/s 271(1)(c)?"

2. The present reference relates to the assessment year 1989-90.

Brief facts of the case are that a search was conducted at the residential as well as business premises of the assessee-respondent ("assessee") on 30-8-1988 and during the course of which cash, jewellery and other valuable articles and things were found and seized. The assessment was completed on an income of Rs. 17,68,000, which included unexplained cash of Rs. 1,30,000, unexplained jewellery of Rs. 15,67,981, unexplained investment in pawned articles of Rs. 60,900, unexplained investment to advance debtors amounting to Rs. 4,169. During the search and seizure proceedings, the assessee had declared his income and had also moved application for settlement before the learned CIR, Kanpur. Consequently, on the settlement arrived at, the assessment was framed on the disclosed income of the assessee. As regards the penalty proceedings, the

learned CIT had issued directions that penalty proceedings u/s 271(1)(c) may not be applicable in case where additional income is covered by Explanation 5 to section 271(1)(c). Thereafter the assessing officer, after scrutinising the facts of the case, came to the conclusion that the facts of the case were not covered by Explanation 5 to section 271(1)(c) and thus, penalty provisions were attracted. Consequently, penalty was imposed.

3. The said penalty order was also confirmed by the learned CIT (A). In second appeal filed by the assessee, the Tribunal discussed the whole issue at length came to the conclusion that the declaration made by the assessee of his undisclosed income during the search and seizure proceedings was covered by the Explanation 5 of section 271(1)(c) and thus, no penalty was imposable.

Tribunal held as follows:

"We have heard the parties at length. We find that there is no dispute about the facts. The assessee had disclosed an income of Rs. 17 lakhs and surrendered the same in his statement u/s 132(4). No doubt, the assessee gave out the details of the investment of the alleged amount of Rs. 17 lakhs under different heads, but we feel that it was immaterial as it was only an estimate and calculation made by the assessee, which could be a little less or a little more, after final calculation by the department. The very fact that the assessee and its group had made an application before the learned CIT (A) during the proceedings on 11-1-1989 and in para 5 of the said application, it stressed that the petitioners had voluntarily in good faith and bona fide, declared income u/s 132(4) to purchase peace with the Department and also to cut short protracted litigation and in order to co-operate and assist in quick disposal of settlement proceedings. The assessee on 27-12-1989 had further moved an application that the assessee before the conclusion of search, i.e., operation of locker, a further sum of Rs. 1,90,166 was surrendered and thereby making a total, surrendered at Rs. 18,90,166, as the then D.D.I./A/D/I/ had informed that if any further amount is surrendered before the operation of the locker, then that amount will also be treated as surrendered u/s 132(4). These two applications made by the assessee and the other members of his group, clearly go to suggest that the assessee was making a clean-breast confession of" his undisclosed income and he did try to co-operate with the Department to the maximum to avoid protracted litigation between him and the Department. In our opinion, the basic idea/intention behind providing Explanation 5(2) of section 271(1)(c) is to avoid litigation by the Department and to get the maximum Income Tax at the earliest from the person whose business premises as well as residential are searched. Here, the facts of the case clearly go to suggest that at the very out-set, i.e., on the very first day of search, the assessee surrendered Rs. 17 lakhs and also later on when the jewellery was correctly evaluated, he further surrendered an amount of more than assessed, i.e., Rs. 1,90,000. The total income assessed on the basis of the directions of the learned CIT, before whom the whole group had made an application for settlement was Rs. 17,63,650 i.e., a little more than the original surrender and

far less than the subsequent surrender made on 27-12-1989.

Now the only thing to be seen is as to whether the conditions provided under Explanation 5(2) of section 271(1)(c) have been complied with or not. For that, we find that the facts are covered by our own decision in the case of Radha Krishna Goel, copy of which has been filed in the compilation at pages 34 to 46 and which has also been relied upon by the learned CIT(A), are covered. In the said decision, we have discussed at length that the surrender made in the statement u/s 132(4) under similar circumstances, covers the provisions of Explanation 5(2) of section 271(1)(c). In that case too, the facts were practically identical. We, therefore, for the sake of brevity, avoid repeating the entire reasoning and the discussion made by us and adoption the same here, we hold that the application of Explanation 5(2) of section 271(1)(e) were fully complied and thereby the assessee was entitled to the concession granted by the law. We accordingly, hold that the imposition of penalty in this case was not justified and, therefore, even the sustenance of part of it by the learned CIT (A) deserves to be deleted. We accordingly, allow the assessee's appeal and dismiss the Department's appeal."

4. Heard learned standing counsel appearing on behalf of revenue and Sri Shakeel Ahmad, learned counsel for the assessee-respondent.

5. Both the counsels agreed that the issue involved in the present case is similar to the issue involved in CIT v. Radha Kishan Goel IT Reference No. 111 of 1993, dated 21-4-2005] in favour of the assessee and against the revenue.

6. Respectfully following the aforesaid decision in Radha Kishan Goel case (supra), we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue.