
(1984) 09 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 134 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Mehar Singh

RESPONDENT

Date of Decision : 05-09-1984

Acts Referred:

Income Tax Act, 1961 — Section 256, 271(1)

Citation : (1985) 154 ITR 637

Hon'ble Judges : Surinder Singh, J; D.S. Tewatia, J

Bench : Division Bench

Advocate : S.S. Nijjar, for the Appellant; N.K. Sood and S.C. Nagpal, for the Respondent

Judgement

Tewatia, J.—The petitioner, Commissioner of Income Tax, has approached this court to direct the Tribunal to refer the following question of law to this court for its opinion:

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in cancelling the penalty levied by the Inspecting Assistant Commissioner u/s 271(1)(c) ?"

2. The question of concealment of income is primarily a question of fact, unless it is shown that in arriving at the said conclusion of fact one way or the other, the Tribunal misapplied or misguided itself in regard to the relevant legal principles bearing upon the given question of fact.

3. In the present case, on behalf of the petitioner, it is canvassed that the Tribunal overlooked the Explanation added by the Finance Act of 1964 to Section 271(1)(c) of the I.T. Act, 1961, in that whereas the Explanation shifted the onus to the assessee to prove that the alleged concealment of income was not due to any fraud or neglect on his part, the Tribunal even then required the Revenue to discharge the onus that the undisclosed income was the income of the assessee.

4. From a perusal of the order of the Tribunal, dated August 28, 1976, from

which the given question of law arises, as also the later order dated March 25, 1977, whereby it declined to refer the said question to this court, it is apparent that the Tribunal has kept in view the given explanation and applied the legal principles correctly. In substance, it has held that the assessee had discharged the initial burden by adducing requisite material on the record and since the "onus shifted to the Department to lead evidence in order to rebut the evidence adduced by the assessee and the Revenue led no such evidence, the burden on it remained undischarged and in that event on the preponderance of probability, the issue had to be decided in favour of the assessee. In the light of the above, it cannot be said that the Tribunal did not correctly apply the given legal principles governing the case. In fact, the order of the Tribunal clearly is in accord with the Full Bench decision of this court in Vishwakarma Industries Vs. Commissioner of Income Tax, .

5. It has been, however, canvassed on behalf of the Revenue that in view of the Full Bench decision, the Tribunal cannot even require the Revenue to prove the falsity of the explanation offered by the assessee. An identical question was raised before this court in Wealth-tax References Nos. 11 and 12 of 1980 Commissioner of Wealth-tax Vs. Jagir Singh,) and this court repelled the contention with the following observations (at p. 636) :

"Learned counsel for the Revenue, however, maintained that in the light of the Full Bench decision in Vishwakarma Industries Vs. Commissioner of Income Tax, , the Tribunal could not require the Revenue to prove the falsity of the explanation. This assertion on the part of the Revenue runs counter to the observations of the Full Bench extracted above. Once the assessee's explanation is found plausible by the Tribunal, then the same has to be accepted, unless there exists any material on the record or brought on the record by the Revenue to show that, in fact, the explanation offered by the assessee is false. In the present case, the Tribunal has expressly stated that the explanation offered by the assessee was plausible and it further mentioned that the Revenue had led no evidence to prove that it was false and, therefore, it accepted the same. The explanation offered by the assessee, unless it is inherently false, cannot be treated as false merely because the Department says so and if the Tribunal finds it plausible, it must be accepted, unless some material brought on the record by the Revenue proves its falsity."

6. For the reasons aforementioned, we find no merit in this petition and reject the prayer for issue of a direction against the Tribunal. However, there will be no order as to costs.

Surinder Singh, J.

7. I agree.