(1984) 02 P&H CK 0113

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No. 19 of 1977

Commissioner of Income Tax APPELLANT

Vs

Midda Ram RESPONDENT

Date of Decision : 07-02-1984

Acts Referred:

Income Tax Act, 1961 — Section 256, 256(1), 256(2), 271(1)

Citation : (1984) 43 CTR 234 : (1985) 152 ITR 203

Hon'ble Judges : S.S. Kang, J;M.R. Sharma, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; None, for the Respondent

Judgement

M.R. Sharma, J.—For the assessment year 1967-68, during the assessment proceedings, the ITO noticed that the assessee had shown a cash credit of Rs. 15,000 in his account books in the name of one Sucha Singh of village Bhucho. The said Sucha Singh was produced by the assessee before the ITO. He stated that he had mortgaged seven acres of land situated in District Ferozepore in January, 1967, for a sum of Rs.16,500 in order to raise funds for the construction of a house at Bhucho, but later on he changed his mind and advanced a sum of Rs. 15,000 to the assessee in February, 1967. He also stated that later on he received this amount back from the assessee in two instalments. The return of this amount was duly reflected in the books of account of the assessee. The ITO, however, came to the conclusion that the said Sucha Singh had very meagre income and he could not have got that land redeemed after one year without getting this amount from the assessee. Since the books of the assessee showed that this amount was returned to Shri Sucha Sinch much later, the ITO disbelieved the version of the assessee that Rs. 15,000 had been advanced to him by Shri Sucha Singh. On this basis, he started penalty proceedings and imposed a penalty of Rs. 15,000 on the assessee, vide his order dated March 20, 1975. The assessee went up in appeal, which was dismissed by the AAC. The assessee went up in appeal before the Tribunal, which allowed the appeal on the ground that, merely because the explanation given by the assessee had been disbelieved, no penalty could have been imposed upon him. The Commissoner of Income Tax applied to the Tribunal for making a reference to this court for giving its opinion on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in cancelling the penalty of Rs. 15,000 levied u/s 271(1)(c) of the Income Tax Act, 1961 ?"

2. The Tribunal, vide its impugned order, declined this prayer.

3. We have heard the learned counsel for the parties. It is no doubt true that in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , it has been laid down that before penalty can be imposed, the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. However, after April 1, 1964, the situation has been amended and the word "deliberately" has been deleted from Section 271(1)(c) of the I.T. Act, 1961. In a case arising after that period, a Division Bench of this court had considered a similar point in Jawahar Woollen Textile Mills Vs. Commissioner of Income Tax (Central), . Therein, the ITO had tried to ascertain from the available source whether the amount in question was the income of the assessee or not. The debtor, whose name was mentioned in the account books of the assessee, was also summoned and examined as a witness by the ITO. On the basis of this evidence and other circumstances, it was held that there was material on record to show that the assessee had concealed his income. However, at this stage, we are not concerned with the final outcome of the case, but what we wish to emphasise is that a question of law does arise in the case. We, accordingly, allow this petition and direct the Tribunal to refer to us the above-quoted question of law. Since there is no representation on behalf of the assessee, there will be no order as to costs.