(1996) 05 MP CK 0038

In the Madhya Pradesh High Court

Case No : M.C.C. No. 162 of 1993

Commissioner of Income Tax APPELLANT

Vs

Mohanlal Radhakrishna RESPONDENT

Date of Decision : 11-05-1996

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

Citation : (1997) 134 CTR 564 : (1997) 225 ITR 867

Hon'ble Judges : Nirmal Kumar Jain, J;Asha Ram Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; V.K. Jain, for the Respondent

Judgement

A.R.Tiwari, J.—The applicant (Commissioner of Income Tax, Bhopal) has filed this application u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), seeking a direction to the Tribunal to state the case and refer the proposed question, as extracted below, arising out of the order dated May 15, 1992, passed in I.T.A. No. 87/Ind of 1990, after rejection of the application, presented u/s 256(1) of the Act and registered as R. A. No. 137/Ind of 1992 for the assessment year 1984-85 on November 30, 1992 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty u/s 271(1)(c) ?"

2. Briefly stated, the facts of the case are that the assessee is a registered firm. The Income Tax Officer noticed that the sum of Rs. 50,000 was advanced on October 28, 1983, to a sister concern, Suman Oil Mills, vide entry on Rokad Panna 122. This amount was also found credited in the account held in the Bank of India and was drawn on the same date. A credit of Rs. 15,000 appeared in the cash book of the firm on May 16, 1983, but the entry in the pass book appeared on March 6, 1982. The amount was appropriated earlier and not in the accounting year relevant to the assessment year under consideration. The assessee was asked to prove the availability of the above amount credited in the

cash book. The firm was also asked to prove the source of the amount. The assessee submitted a letter on March 10, 1985, to surrender the amount of Rs. 65,000 with the condition that no penalty should be imposed u/s 271(1)(c) of the Act. The above proposal was not accepted by the Income Tax Officer and the assessee was asked to explain after collection of evidence. The assessee surrendered the amount as unexplained credit of Rs. 65,000. Treating this as concealment of income, penalty was imposed u/s 271(1)(c) of the Act. Eventually, the penalty was cancelled by the Tribunal.

3. Dissatisfied, the Department filed the application u/s 256(1) of the Act which was rejected. Thereafter the Department has filed this application u/s 256(2) of the Act.

4. We have heard Shri D. D. Vyas, learned counsel for the applicant/ Department, and Shri V. K. Jain, learned counsel for the non-applicant/ assessee.

5. Shri Vyas submitted that evidently it was a case of concealed income to the extent of Rs. 65,000 and as such the penalty was wrongly cancelled. He further submitted that the conclusion culminating in cancellation of penalty is perverse and perversity gives rise to a question of law. Shri Jain, on the other hand, submitted that the penalty was cancelled on proper appreciation of the evidence and that the proposed question was not one of law.

6. It emerges from the record that the assessee surrendered the income of Rs. 65,000 when it found it difficult to explain the non-disclosure earlier. However, as we are issuing the direction, as prayed, we do not find it proper to go into the details of the matter and express any opinion at this stage.

7. On the basis of the factual position it remains to be seen whether the Tribunal was justified in holding that there was no concealment of income and in cancelling the penalty imposed u/s 271(1)(c) of the Act.

8. Taking into account the factual matrix and legal position, we find that this application u/s 256(2) of the Act deserves to be allowed.

9. Accordingly, we allow this application and call upon the Tribunal to state the case and refer the aforesaid question of law for our consideration and opinion as expeditiously as possible.

10. We, however, make no order as to costs.

11. Counsel fee for each side is, however, fixed at Rs. 750, if certified.

12. Transmit a copy of this order to the Tribunal.

