(2001) 01 DEL CK 0074

In the Delhi High Court

Case No : Income-tax Reference No. 128 of 1982

Commissioner of Income Tax APPELLANT

Vs

Mohd. Masoom RESPONDENT

Date of Decision : 25-01-2001

Acts Referred:

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

Citation : (2001) 170 CTR 58 : (2001) 252 ITR 596 : (2001) 117 TAXMAN 499

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Sanjiv Khanna and Ajay Jha, for the Appellant; None, for the Respondent

Judgement

Arijit Pasayat, C.J.—Pursuant to the direction given by this court u/s 256(2) of the Income Tax Act, 1961 (in short "the Act"), in ITC No. 279 of 1979, the Income Tax Appellate Tribunal, Delhi Bench-D ("the Tribunal" in short), has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal had enough material to come to the conclusion that Mohd. Masoom was not the owner of the gold which was confiscated from the car which admittedly belonged to him ?"

2. The dispute relates to the assessment year 1974-75.

3. The factual position as indicated in the statement of case is as follows :

4. The assessed at the relevant point of time dealt in plastic beads and was carrying on business in the name and style of Bombay General Stores. The beads used to be purchased from Bombay and received by train. The Revenue intelligence authorities received information that gold was being smuggled along with beads in the boxes. They kept a watch on the movement of the assessed. He was found taking delivery of two boxes from Frontier Mail at New Delhi Railway Station on April 10, 1973. The goods were taken in an Ambassador car

belonging to the assessed. The intelligence authorities arrested him and searched the boxes and found 1,550 tolas of primary gold which were seized. The authorities also kept a watch on the parcels received by the same train on April 11, 1973. On that date also two parcels had arrived from Bombay from which they recovered 500 tolas of primary gold. The assessed was examined by the Intelligence Officers. He admitted before them to have carried on the activities of smuggling but stated that he was only a carrier and the gold actually belonged to one Daya Shankar Kapoor of Shakti Nagar, Delhi. The Income Tax authorities initiated proceedings against the assessed for the assessment years 1973-74 and 1974-75. They questioned him about his activities and the gold recovered by the Revenue intelligence authorities. Before the Income Tax Officer the assessed flatly denied to have any connection with the smuggling activities. He stated that he was falsely implicated by the authorities and he did not know any Daya Shankar Kapoor. He also denied to have done any job as carrier of gold for Daya Shankar Kapoor. The Income Tax Officer held that the assessed was the owner of the gold. He estimated its value at Rs. 7,17,500 and added the same as the assessed''s undisclosed income. The assessed preferred an appeal before the Appellate Assistant Commissioner ("the AAC" in short). The said authority affirmed the conclusions of the Assessing Officer. The matter was carried in further appeal before the Tribunal. The stand of the assessed was accepted and the addition was deleted by the Tribunal.

5. The relevant observations of the Tribunal are contained in paragraph 4 of its order which read as follows :

"The assessed is now in appeal before us. We have heard the parties. We have also gone through the order of the Collector of Customs dated March 30, 1977, referred to above. The finding of the Collector as contained in para. 35 of his order is that Shri Daya Shankar was the financier in this organisation and that he was also the receiver of the gold. In view of this finding, we do not find any material to hold that the assessed was the owner of the gold or that he had financed its purchase. The assessed will, Therefore, get relief of Rs. 7,17,500 in the assessment year 1974-75. The Department will, of course, be at liberty to proceed against Shri Daya Shankar, if otherwise permissible under the Act".

6. The Revenue''s prayer for reference u/s 256(1) of the Act was turned down. However, on being moved u/s 256(2) of the Act a direction was given by this court to refer the question as set out above.

7. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed in spite of notice. Learned counsel for the Revenue submitted that the conclusions of the Tribunal are erroneous and contrary to the facts.

8. We find that the Tribunal referred to the order passed by the customs authorities wherein it was held that Daya Shankar Kapoor was the financier in the organisation and the assessed was not the owner of the gold and had not

financed its purchase. The conclusions of the Tribunal are essentially factual giving rise to no question of law. Therefore, we decline to answer the question.

9. The reference is returned unanswered.

