(1971) 10 AHC CK 0015

In the Allahabad High Court

Case No : Income-tax Reference No. 324 of 1965

Commissioner of Income Tax APPELLANT

Vs

Net Ram Ram Swarup RESPONDENT

Date of Decision : 15-10-1971

Acts Referred:
Income Tax Act, 1922 — Section 28(1)

Citation : (1973) 88 ITR 213

Hon'ble Judges : R.S. Pathak, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : B.L. Gupta and R.R. Misra, for the Appellant; R.K. Upadhya, for the Respondent

Final Decision : Disposed Of

Judgement

C.S.P. Singh, J.—Two questions have been referred to us at the instance of the Commissioner of Income Tax. They are:

" 1. Whether the order of the Appellate Tribunal was vitiated by its failure to consider all the material upon which the Appellate Assistant Commissioner rested his decision upholding the order of penalty imposed by the Income Tax Officer ?

2. Whether the mere failure of the assessee to prove the nature and source of the deposits was sufficient to discharge the burden of the department that the assessee was liable to penalty u/s 28(1)(c) of the Income Tax Act, 1922 ?"

2. The facts necessary for the disposal of these questions fall within a narrow compass. The assessment years involved are 1955-56 and 1956-57. The assessment for the year 1955-56 was completed on a total income of Rs. 14,047. During the proceedings for assessment for 1956-57 the Income Tax Officer found that the assessee had received certain cheques about which information was not available, and that there were some suspicious cash credits in the books of account of prior accounting year also, i.e., year relevant for the assessment year 1955-56. The Income Tax Officer thereafter initiated

proceedings u/s 34 for the assessment year 1955-56. The assessee was asked to explain the nature and source of the cash credits and in response thereof the assessee produced the depositors. Subsequently, however, one of the partners of the firm wrote a letter to the Income Tax Officer surrendering for assessment cash credits amounting to Rs. 28,097 and Rs. 13,800 for the two years, respectively. The Income Tax Officer added the amounts surrendered for the year 1955-56 but made certain additions to the profits apart from the amounts surrendered for the year 1955-56. Proceedings u/s 28 were initiated and a show cause notice was issued to the assessee. The assessee took up the stand that the mere fact that it had agreed to the inclusion of certain amounts did not mean that it had concealed its income and that the offer had been made because it felt that it was unable to prove its case for want of proper evidence. Apart from this, it was also contended that the offer of the assessee to agree to the addition amounted to revising the original return and as such no question of penalty arose. The Income Tax Officer held that the assessee had concealed its income and as such was liable to penalty. The Appellate Assistant Commissioner was of the view that the mere fact that the assessee had offered to accept the additions voluntarily will not mitigate against the original default in furnishing accurate figures of income. He, therefore, upheld the order passed by the Income Tax Officer. The Tribunal, on appeal, however, took the view that the mere fact that the assessee had failed to prove the nature and source of the deposit would not attract the provisions of Section 28(1)(c), and inasmuch as burden of proving deliberate concealment was upon the department, which had not been satisfactorily discharged no occasion arose for the imposition of any penalty. When the matter came up for hearing earlier, we directed a supplementary statement of the case to be submitted to this court, and the Tribunal incompliance of our order has sent the supplementary statement. From that statement it transpires that the Tribunal while disposing of the appeal and holding that the assessee was not liable to the imposition of penalty had taken into account the fact that the assessee had agreed to additions being made in his return. Question No. 1, which seeks the finding of the Tribunal on the ground that there has been failure on its part to consider all the material which the Appellate Assistant Commissioner took into account, must as such be answered against the department inasmuch as after reading both the orders, and the supplementary statement of the case submitted by the Tribunal, it cannot be said that the Tribunal has omitted to consider any material which bad been considered by the Appellate Assistant Commissioner. The second question referred is concluded by the decision of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, where it has been held that in the absence of cogent material evidence, apart from the falsity of the assessee''s explanation, it cannot be inferred that the assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars. The question as framed as such must also be answered against the assessee. We, therefore, answer both the questions in the negative and against the department. Inasmuch as no one has appeared on behalf of the assessee, there shall be no order as to costs. Counsel''s fee is assessed at Rs. 200.

