(1999) 05 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No. 14 of 1998

Commissioner of Income Tax — APPELLANT

Vs

Prem Das — RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 148, 173(1), 256(2), 271(1)

Citation : (2001) 167 CTR 158 : (2001) 248 ITR 234 : (2001) 118 TAXMAN 619

Hon'ble Judges : N.K. Agrawal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant; Hemant Kumar and Lokesh Sinhal, for the Respondent

Judgement

N.K. Agrawal J.—This is a petition filed by the Commissioner of Income Tax, Rohtak, u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), seeking a direction to the Income Tax Appellate Tribunal, New Delhi (for short, "the Tribunal"), to refer the following question of law in respect of the assessment year 1982-83 for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in cancelling the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961, at Rs. 42,250 which was confirmed by the Commissioner of Income Tax (Appeals) ?"

2. The assessee carried on, as an individual, transport business and also derived income from rent and interest. A return of income for the assessment year 1982-83 was filed declaring income of Rs. 30,200. Assessment was completed on the declared income u/s 143(1) of the Act.

3. A search was later on carried out at the business premises of the assessee and some books of account and incriminating" documents were seized. A notice u/s 148 of the Act was issued to the assessee. The assessee, in response to the notice, filed a return showing income at Rs. 30,180. The assessee also showed

the gross amount of commission earned by him from the plying of trucks belonging to others at Rs. 26,177. Receipts of freight from his own trucks were declared at Rs. 5,23,785.

4. The Assessing Officer made an assessment on the income of Rs. 1,21,205. It included income from commission also. Income from commission was computed at 10 per cent, on the gross freight receipts determined at Rs. 4,14,000. These receipts of freights related to the trucks owned by others but plied by the assessee.

5. The gross freight receipts received by the assessee from the trucks owned by him were determined at Rs. 5,47,380 and expenditures were allowed at 80 per cent. Determination of both the gross receipts was accepted by the assessee and was not challenged in appeal. The assessee, however, went in appeal before the Commissioner of Income Tax (Appeals) against the lower estimate made by the Assessing Officer in respect of the expenditures and higher estimate for income from commission. The Commissioner (Appeals) reduced the income from commission from 10 per cent, to 8 per cent, of the gross freight receipts. Expenditures were allowed at 84 per cent, as against 80 per cent, allowed by the Assessing Officer.

6. The Assessing Officer levied penalty on the assessee for concealment of income u/s 271(1)(c) of the Act. The assessee again went in appeal before the Commissioner of Income Tax (Appeals) against the levy of penalty but did not succeed. He went in further appeal before the Tribunal, which cancelled the penalty.

7. We have heard learned counsel for the Revenue and the assessee.

8. It appears that the assessee had claimed deduction of expenses from the gross freight receipts in respect of his own trucks on estimate basis and had shown income from commission at 7 per cent, of the gross receipts in respect of the trucks owned by others. The Assessing Officer had allowed expenditure at 80 per cent. The Commissioner of Income Tax (Appeals) allowed expenditure at 84 per cent. Similarly, whereas the Assessing Officer had estimated income from commission at 10 per cent the Commissioner allowed it at 8 per cent.

9. The Tribunal found that the difference between the returned and the assessed income was due to the difference of opinion about the estimated rates of income and expenditure. Income had been enhanced by the Assessing Officer by adopting a lower estimate in respect of the expenditure and higher estimate with regard to the income from commission. The Assessing Officer determined the income of the assessee on estimate basis. The Tribunal noticed that since the difference in estimates was based on a difference of opinion, there was no positive proof regarding concealment of income by the assessee. The assessee had shown expenditure as also the income from commission on estimate basis. The rates of estimate were varied by the Assessing Officer. These were further varied by the Commissioner of Income Tax (Appeals). The Tribunal, therefore,

cancelled the penalty on the ground that there was no positive evidence to prove suppression of income.

10. On a consideration of the matter, it is noticed that the assessee had returned income on estimate basis. The Assessing Officer and the Commissioner adopted different estimates. It was, thus, a case of difference of opinion.

11. No referable question of law arises from the order of the Tribunal. The application is, therefore, dismissed. No costs.