(1984) 11 AHC CK 0033

In the Allahabad High Court

Case No : Income-tax Application No''s. 237 and 238 of 1982

Commissioner of Income Tax — APPELLANT

Vs

Raj Bans Singh — RESPONDENT

Date of Decision : 14-11-1984

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

Citation : (1986) 158 ITR 209 : (1985) 22 TAXMAN 53

Hon'ble Judges : Om Prakash, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Rajesh Kumar, for the Appellant; M. Katju and Bharatji Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—These are the two applications u/s 256(2) of the Income Tax Act, 1961, filed by the Revenue for the assessment years 1973-74 and 1974-75, for asking the Tribunal to refer the following questions to this court:

Assessment year 1973-74 :

"(1) Whether, on the facts and in the circumstances of the case, there was material before the Tribunal to hold that the assessee had discharged its burden to rebut the presumption of concealment ?

(2) Whether, on the facts and in the circumstances of the case, when the Explanation to Section 271(1)(c) is admittedly attracted, the Tribunal''s requirement of positive evidence of concealment is legally correct ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct in holding that penalty is not leviable ?"

Assessment year 1974-75 :

"(1) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the penalty u/s 271(1)(c) is not imposable in the absence of a finding of concealment is legally correct ?

(2) Whether, on the facts and in the circumstances of the case, there was material before the Tribunal that there was no gross or willful neglect ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in cancelling the penalty imposed by the Income Tax Officer ?"

Both the applications can be conveniently disposed of together and, therefore, they are consolidated.

2. We have heard Shri Markandey Katju, learned counsel for the Revenue, and Shri Rajesh Kumar, learned counsel for the assessee, at some length. The submissions of Shri Katju are : that the Appellate Assistant Commissioner having held that the case was covered by the Explanation to Section 271(1)(c), the only question for consideration before the Tribunal was whether the assessee established that the concealment was not due to fraud or gross or willful neglect; that concealment having been presumed under the Explanation, there was no need for the Revenue to prove concealment or to lead positive evidence to prove concealment and that the Tribunal gave a finding without any material that the onus cast by the Explanation on the assessee was discharged. Having perused the record and the findings of the Tribunal, we are of the view that the questions as proposed by the Revenue in both the applications do arise from the order of the Tribunal and they are questions of law.

3. In the result, both the applications are allowed. The Tribunal is directed to draw up a statement of facts and refer the aforementioned questions of law to this court. No order as to costs.