
(2004) 08 AHC CK 0140

In the Allahabad High Court

Case No : Income-tax Reference No. 109 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Raj Bans Singh

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Income Tax Act, 1961 — Section 10(2), 256(2), 271(1)

Citation : (2005) 276 ITR 351

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant;

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following questions of law u/s 256(2) of the Income Tax Act, 1961, hereinafter referred to as "the Act"), for opinion 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 on 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 a material before the Tribunal that there was gross and wilful 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 ?"

2. We have heard Sri A.N. Mahajan, learned standing counsel for the Revenue. In spite of affidavit of service having been filed, nobody has put in appearance on behalf of the respondent.

3. Briefly stated, the facts giving rise to the present reference are as follows :

The reference relates to the assessment years 1973-74 and 1974-75. The respondent is a lawyer who practises before the Board of Revenue and had income from a truck also which was sold in November, 1973. For the assessment year 1973-74, the respondent declared a net income of Rs. 375. The assessment was, however, completed on a total income of Rs. 19,350 which was reduced in appeal to Rs. 14,350. The income from the truck was confirmed at Rs. 20,000 as against Rs. 11,000 declared. Similarly, for the assessment year 1974-75, he declared a net income of Rs. 5,662 whereas the assessment was completed by enhancing the income from the truck by Rs. 13,000 which was reduced in appeal by Rs. 6,000 and profit u/s 10(2) on sale of truck was reduced from Rs. 8,506 to Rs. 7,605. The Income Tax Officer initiated penalty proceedings u/s 271(1)(c) of the Act in respect of both the years and holding the incomes to be concealed, he levied penalties of Rs. 10,599 and Rs. 7,000, respectively, with reference to the amounts of Rs. 10,599 and Rs. 6,755, held to be the incomes concealed. The respondent being aggrieved filed appeals before the Appellate Assistant Commissioner who holding that the respondent had not furnished correct particulars of income and that he had failed to rebut the presumption of concealment available due to the application of the Explanation to Section 271(1)(c), confirmed the penalty for the assessment year 1973-74. For the assessment year 1974-75, the Appellate Assistant Commissioner held that there was a wide difference between the income declared and the assessed income and that the respondent had failed to rebut the presumption of concealment. He also held that the respondent had tried to suppress the income from the truck and had made incorrect claim of depreciation even though the truck was sold. However, since the return was filed on April 9, 1975, i.e., before April 1, 1976, he directed the Income Tax Officer to impose the minimum penalty under the unamended provisions of Section 271(1)(c) of the Act.

4. On appeal, the Tribunal came to the conclusion that it was a case of an estimate against an estimate and there was no concealment and accordingly it was held that no penalty was imposable. On similar considerations, the penalty for the assessment year 1974-75 was also cancelled holding that even though the depreciation claimed was more, the Appellate Assistant Commissioner was not right in observing that it amounted to a gross neglect, if not wilful.

5. The Tribunal had recorded the following findings while deleting the penalty u/s

271(1)(c) of the Act :

"We have considered the rival submissions as also the various decisions relied upon on behalf of both the parties. This is not a case of rejection of the books of account or of non-production of the books of account. It is a case of pure and simple estimate of income in the absence of any books of account. Thus it is a case of an estimate against an estimate. Although it is correct on principle that even in cases of estimate penalty u/s 271(1)(c) may be attracted if the facts established concealment of income or furnishing of inaccurate particulars of income. There is no finding of concealment in this case. The presumption of concealment available to the Revenue by virtue of the application of the Explanation to Section 271(1)(c) could be rebutted by the assessee on the basis of the negative evidence showing absence of fraud, or gross or wilful neglect. In this sense the facts and circumstances on the record are in favour of the assessee. There was no positive evidence on the basis of which it could be said that the addition of income from the truck sustained in this case was really the income of the assessee. Accordingly, we are of the clear view that in the facts and circumstances of the present case no penalty was imposable on the assessee u/s 271(1)(c). The penalty imposed is, therefore, cancelled and the appeal for the assessment year 1973-74 is allowed."

6. In respect of the assessment year 1974-75, the Tribunal has held as follows :

"We have considered the rival submissions. On considerations similar to those for the assessment year 1973-74 we find that the income from the truck was merely estimated. So far as the claim for depreciation is concerned, no doubt the depreciation claim was more but we do not agree with the learned Appellate Assistant Commissioner that it amount to a gross neglect if not wilful. There was no finding of concealment. Accordingly this is also not a case for imposition of any penalty u/s 271(1)(c) which requires to be cancelled."

7. Thus, from the findings recorded by the Tribunal that the respondent has not deliberately concealed the income, no penalty u/s 271(1)(c) of the Act was imposable.

8. In view of the foregoing discussion, we answer the questions of law in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.