(2004) 03 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No. 8 of 1997

Commissioner of Income Tax APPELLANT

Vs

Rajan Kumar RESPONDENT

Date of Decision : 08-03-2004

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

Citation : (2005) 272 ITR 377

Hon'ble Judges : N.K. Sud, J;Hemant Gupta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Kishan Singh, for the Appellant; Varun Gupta, for Akshay Bhan, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sud, J.—The Revenue has filed this petition u/s 256(2) of the Income Tax Act, 1961, (for short "the Act"), relating to the assessment year 1981-82 praying that the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal"), be directed to prepare a statement of the case and refer the following question of law arising out of its order dated March 26, 1996, for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in confirming the order of the Commissioner of Income Tax (Appeals), who deleted the penalty of Rs. 3,07,882 u/s 271(1)(c) of the Income Tax Act, 1961, for the assessment year 1981-82, particularly when reference petition of the Department is pending before the hon''ble Punjab and Haryana High Court against the order of the Income Tax Appellate Tribunal passed in R. A. No. 73/Chandi of 1990 ?"

2. The Revenue had earlier filed application u/s 256(1) of the Act requiring the Tribunal to refer this question to this court. The said application was rejected by the Tribunal vide order dated September 2, 1996, on the ground that it had

already rejected the Revenue''s reference application against the quantum appeal.

3. Learned counsel for the petitioner has brought to our notice that reference petition u/s 256(2) of the Act in the quantum appeals have already been allowed by this court and the Tribunal on the direction of this court has already referred the question of law arising out of its order in those appeals which are listed as I. T. R. Nos. 204 to 208 of 1999.

4. In view of the above, we are satisfied that the Revenue deserves to succeed. Accordingly, we allow this petition with the direction to the Tribunal to prepare a statement of the case and refer the following question of law for the opinion of this court :

"Whether, on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal is right in law in upholding the deletion of penalty u/s 271(1)(c) of the Income Tax Act, 1961 ?"