(2008) 02 AHC CK 0035

In the Allahabad High Court

Commissioner of Income Tax — APPELLANT

Vs

Ram Prakash — RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:
Income Tax Act, 1961 — Section 271

Citation : (2008) 02 AHC CK 0035

Hon'ble Judges : Sushil Harkauli, J;Sudhir Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The question referred to his court in this case is as follows:

Whether, on the facts and in the circumstances of the case, the Tribunal was in law justified in holding that no penalty u/s 271(1)(c) of the Income Tax Act was leviable in the present case ?

2. The Tribunal has decided the case by order dated 10-2-1988, according to the provision of Explanation 1 to Section 271(1) as stood after the amendment of 1986. The assessment year involved in this case is 1997-98. At that time, the Explanation 1, more particularly clause (B) thereof stood as follows:

Explanation 1. Where in respect of any facts material to the computation of the total income of any person under this Act

(A) Such person fails to offer an explanation or offers an explanation which is found by the Income Tax Officer or the appellate Assistant Commissioner or the Commissioner (Appeals) or be false, or

(B) Such person offers an explanation which he is not able to substantiate, then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purpose of clause (c) of this Sub-section be deemed to represent the income in respect of which particulars have been concealed:

Provided that nothing contained in this Explanation shall apply to a case referred to in clause (B) in respect of any amount added or disallowed as a result of the rejection of any explanation offered by such person, if such explanation is bona fide and all the facts relating to the same and material to the computation of his total income have been disclosed by him.

Subsequent to the 1986 amendment, the said Explanation 1 now reads as follows:

Explanation Where in repect of any facts material to the computation of the total income of any person under this Act

(A)Such person fails to offer an explanation or offers an explanation or offers an explanation which is found by the assessing officer or the Commissioner (Appeals) or the Commissioner to be false, or

(B) Such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been dislosed by him, then the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purpose of clause (c) of this Sub-section be deemed to represent the income in respect of which particulars have been concealed.

3. Sri Govind Krishna, learned Counsel for the department contended that once the explanation of the assessee was not found to be correct, it was evident that he was guilty of concealment of facts, material to computation of the total income, and the onus lies upon him to show that the explanation was bona fide. The Tribunal in holding otherwise has erred in law by relying on the Explanation to Section 271(1) as it stood amended in 1986. However, we do not find any force in this submission. The provision as existed in the assessment year 1977-78 is not materially different from the one as it was amended in 1986. The only difference in the two is that earlier what was provided in the proviso to Explanation I has now been made part of the Explanation I clause (B) itself but in substance the import of the provision is same. Here is a case where certain material is said to have been handed over to the members of raid team by the neighbours of the assessee stating that the said material pertained to the assessee. On inquiry, it was found that the said material comprises of several documents pertaining to some other persons also who were though members of the family of the assessee, or, were residing in the same residence, but were different than the assessee. The explanation of the assessee for the such material that the same did not relate to the assessee was accepted by the department but in respect to some material the assessee could not substantiate his explanation and, therefore, the same was added in income of the assessee. Obviously, the explanation of the assessee was not found to be false and therefore, it was not a case covered by Explanation 1(A) of Section 271(1) of the Act as it stood in 1977-78. At the best, the matter could have been covered by

Explanation 1(B) which provides that if the explanation offered is not substantiated by the assessee then it would be deemed that income in respect to which the said explanation was offered was concealed income provided it is not a case where the explanation is bona fide and all the facts relating to the said matter is disclosed by the assessee. Here the assessee has shown that all the facts were disclosed by him and the explanation was not found lacking bona fide In these circumstances, the assessee was required only to show that his explanation was bona fide and he has disclosed all the facts relevant in respect to the said material and thereafter the onus lay upon the department to dispute the same. Learned Counsel for the revenue could not show as to what relevant material was not disclosed by the assessee which it ought to have disclosed and how and in what manner it could say that the explanation offered by the assessee was not bona fide. Moreover, the Tribunal has recorded a finding that the explanation offered by the assessee was not found lacking bona fide. Therefore, we do not find any reason to take a different view particularly in absence of any reason pursuing this Court to take a different view.

4. The judgment relied upon on behalf of the revenue is not at all applicable. Sri Govind Krishna has relied upon a judgment of Division Bench of this Court in IT Ref. No. 92 of 1993, Shri Raj Kumar Chaurasia Vs. The Commissioner of Income Tax, decided on 30-10-2006. In our view, the said judgment has no application to the facts of this case inasmuch as, there was a case where the explanation given by the assessee was found false and, therefore, it was a case covered under Explanation 1(A) of Section 271(1) and the Explanation as applicable in Explanation 1(B) was not applicable therein.

5. In view of the above, we answer the question referred above in favour of the assessee and against the revenue holding that the Tribunal was justified in holding that no penalty u/s 271(1)(c) of the Act was leviable in the present case.

The reference is disposed of accordingly.

