
(1985) 04 CAL CK 0037

In the Calcutta High Court

Case No : Income-tax Reference No. 481 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Ramkumar Agarwalla and Brothers

RESPONDENT

Date of Decision : 02-04-1985

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1986) 50 CTR 135 : (1985) 153 ITR 568 : (1985) 23 TAXMAN 74

Hon'ble Judges : Dipak Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the I.T. Act 1961, the following questions of law have been referred to this court for the assessment year 1963-64 :

"1. Whether, on the facts and in the circumstances of the case and in view of the fact that the return of income was filed after April 1, 1964, the Tribunal was right in holding that the provisions of the Explanation to Section 271(1)(c) of the I.T. Act, 1961, introduced with effect from April 1, 1964, cannot be invoked in this case for the assessment year 1963-64 ?

2. Whether, on the facts and in the circumstances of the case, the imposition of penalty by the Inspecting Assistant Commissioner u/s 271(1)(c) was legally justified ?"

2. The assessee filed its return on October 17, 1966, for the assessment year 1963-64, showing an income of Rs. 2,33,085. The ITO found cash deposits aggregating to Rs. 1,65,294 in the assessee's account. One of such cash deposits was in the name of Amba Prosad Jyoti Prosad for Rs. 35,294. The ITO treated the entire deposits as income from undisclosed source. The ITO determined the total income at Rs. 5,27,184 which included the cash deposits held to be not genuine and treated as income from undisclosed sources. The ITO initiated proceedings u/s 271(1)(c) of the I.T. Act, 1961, and referred the matter

to the IAC for imposition of penalty.

3. On appeal against the quantum, the AAC accepted the cash credits as genuine excepting one standing in the name of Amba Prosad Jyoti Prosad for Rs. 35,294. The income was reduced to Rs. 3,82,956. The IAC imposed a penalty of Rs. 22,500 holding that the sum of Rs. 35,294 representing the alleged loan in the name of Amba Prosad Jyoti Prosad was the concealed income of the assessee and the assessee had introduced its own concealed income in the guise of fictitious loan and is thus guilty of concealing income and of furnishing inaccurate particulars thereof.

4. The assessee preferred an appeal against the order imposing the penalty. There was difference of opinion between the two members of the Tribunal who heard the appeal. The accountant member held that the IAC was justified in levying the penalty whereas the judicial member cancelled the penalty. The judicial member held that the Department has not established by cogent material in the penalty proceeding that the alleged loan was not genuine and thus the penalty was not leviable. In view of the difference of opinion, the point of difference was referred to a third member. The third member agreed with the view of the judicial member in cancelling the penalty imposed u/s 271(1)(c) of the Act. He held that the IAC imposed the penalty wholly relying on the assessment order and the order of the AAC, but he himself did not bring on record any material to prove that the alleged loan of Rs. 35,294 represented the income of the assessee. He held that the ratio laid down by the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , would be applicable to the facts of this case. The third member also considered the question whether in view of the fact that the return of income was filed after April 1, 1964, the Explanation to Section 271(1)(c) could be invoked in this case. He held that the Explanation was made applicable with effect from April 1, 1964, that is to say from the assessment year 1963-64 onwards which has no retrospective operation. According to the third member, the Explanation to Section 271(1)(c) is not applicable to the assessee's case. Thus, agreeing with the view of the judicial member, the third member held that the penalty levied u/s 271(1)(c) has to be cancelled. By reason of the majority view, the penalty was cancelled by the Tribunal. On the aforesaid facts, the two questions were referred to this court.

5. The Supreme Court in the case of Brij Mohan Vs. Commissioner of Income Tax , New Delhi, held that where a penalty is imposed for concealment of particulars of income, it is the law ruling at the date on which the act of concealment takes place which is relevant. It is wholly immaterial that the income concealed was to be assessed in relation to an assessment year in the past. The concealment of particulars of income is effected by the assessee when the return of income was filed. In this case, the return of income was filed on October 17, 1966, and, accordingly, the Explanation to Section 271(1)(c) of the I.T. Act, 1961, introduced with effect from April 1, 1964, will govern this case. In

that view of the matter, we answer the first question in the negative and in favour of the Revenue.

6. The Tribunal did not consider the question whether the penalty could be imposed in view of the provisions contained in the Explanation to Section 271(1)(c) of the Act, which governs this case. As a matter of fact, the Tribunal cancelled the penalty following the principles laid down in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . We, therefore, decline to answer the second question referred to us. The Tribunal will dispose of the appeal in the light of the provisions of the Explanation to Section 271(1)(c) of the Act as it stood at the material time.

7. There will be no order as to costs.

Dipak Kumar Sen, J.

8. I agree.