(1981) 07 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 209 of 1979

Commissioner of Income Tax APPELLANT

Vs

Ramnarayan Moolchand RESPONDENT

Date of Decision : 03-07-1981

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

Citation : (1983) 140 ITR 988

Hon'ble Judges : K.N. Shukla, J;K.K. Dube, J

Bench : Division Bench

Advocate : Bagadia, for the Appellant; Chaphekar, for the Respondent

Judgement

Shukla, J.—This is an application at the instance of the Commissioner of Income Tax, M.P., Bhopal, u/s 256(2) of the I.T. Act seeking a direction from this court to the Income Tax Appellate Tribunal, Indore, to refer the following questions arising out of its order dated September 25, 1978 :

" 1. Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the assessee was not guilty of any fraud or wilful neglect in returning the income which resulted in the income being returned at a figure lower than 80% of the income assessed, is contrary to the weight of the material on record and was arrived at without considering the entire evidence and material on record ?

2. Whether, on the facts and in the circumstances of the case, and in view of the provisions contained in Section 271(1)(c) of the income tax Act, 1961, and the Explanation thereto, the Tribunal was right in law in upholding the Appellate Assistant Commissioner''s order cancelling the penalty imposed on the assessee ?"

2. Brief facts relevant to dispose of this application are as follows: The assessee is a dealer in country liquor. For the assessment year 1971-72 he returned an income at Rs. 24,000. No books of account were maintained by the assessee.

The assessee was assessed ex parte u/s 144 of the Act and his income was determined at Rs. 1 lakh. The assessee applied for cancelling the ex parte assessment and the same was cancelled. Later, the assessment was completed u/s 143(2) of the Act and the income was determined at Rs. 36,000. This assessment was made on an agreed basis. In view of the difference between the income returned and the income assessed, the Explanation to Section 271(1)(c) was invoked and penalty proceedings were initiated. The assessee showed cause against the proposed penalty by a letter dated November 15, 1976, and pleaded that the income had been returned and finally assessed on an estimate basis and there was no concealment of income by him.

3. The ITO rejected the explanation of the assessee holding that the assessee failed to prove the absence of fraud or gross or wilful neglect on his part. Accordingly he imposed a penalty of Rs. 12,000.

4. The assessee went in appeal before the AAC, Bhopal, who by his order dated August 23, 1973, cancelled the penalty.

5. The Department appealed against the order of the AAC, before the Income Tax Appellate Tribunal, Indore. The Appellate Tribunal confirmed the order of the AAC and dismissed the appeal.

6. Learned counsel for the Department contends that since the Tribunal did not consider the applicability of the Explanation to Section 271(1)(c) of the I.T. Act and failed to appreciate the question of burden of proof, a question of law arises out of the Tribunal''s order and the Tribunal should be directed to refer the same for this court''s opinion. Reliance was placed on a decision of the Supreme Court in Addl. Commissioner of Income Tax, Gujarat Vs. Chandravilas Hotel, .

7. We have carefully perused the order of the Appellate Tribunal and the material placed before us by the Department. It is clear to us that the Appellate Tribunal addressed itself properly to the question arising in the appeal and after considering the Explanation to Section 271(1)(c) of the Act recorded a finding of fact that there was no concealment of income by the assessee. The case cited by the Department is not applicable because in that case their Lordships of the Supreme Court observed that the Appellate Tribunal had arrived at the finding without considering the entire evidence and material on record. In other words, the finding was perverse and, therefore, a question of law had arisen. Secondly, in the cited case, both sides had agreed that the Appellate Tribunal should be asked to refer the said questions.

8. The above cited case was considered in Commissioner of Income Tax Vs. Goswami Smt. Chandralata Bahuji, , by the Rajasthan High Court. After dealing with the up-to-date case law on the point and the effect of the Explanation to Section 271(1)(c) of the Act, the court observed (Headnote) :

" In order to justify a levy of penalty, there had to be some materials or circumstances leading to the reasonable conclusion that the amount represents the assessee''s income. The Tribunal held on the totality of the evidence, (1) that there was nothing to come to a firm conclusion that the amounts added bona fide represented the income of the assessee, and (2) that too the income of the respective years. Considering the source of funds of the assessee, the Tribunal''s findings were not perverse. The question of applying the Explanation to Section 271(1)(c) never arose. It could not be said that the findings of the Tribunal were either perverse or based on mere surmises and conjectures. No question of law arose from the order of the Tribunal."

9. Learned counsel for the Department invited our attention to some observations made by the Tribunal in the order with regard to the nature and effect of an agreed assessment. It is not necessary for us to make any comment on these observations because they are not relevant. The relevant part of the Tribunal''s order is as follows :

" In this case except for the agreement, there is absolutely no proof that this was an actual income of the assessee and the agreement of the assessee can hardly be utilised as evidence for imposing penalty upon him in the particular circumstances of the case."

10. The basic question to be decided for imposing penalty u/s 271(1)(c) of the Act is whether the assessee has concealed the particulars of his income or furnished inaccurate particulars thereof. The Explanation added to this provision merely relates to the question of burden of proof. If on an overall appreciation of the material on record, the Tribunal arrives at a finding of fact that there is no concealment or inaccurate furnishing of particulars of income, the finding cannot be called perverse and no question of law will arise therefrom.

11. In the instant case the Appellate Tribunal confirmed the order of the AAC holding that the act of the assessee did not warrant the imposing of penalty u/s 271(1)(c) of the Act. Thus, there are concurrent findings of fact by the appellate authorities and no question of law arises therefrom.

12. We, therefore, dismiss this application. There will be no order as to costs.