(1990) 08 AHC CK 0054

In the Allahabad High Court

Case No : Income-tax Reference No. 832 of 1978

Commissioner of Income Tax APPELLANT

Vs

R.K. Agarwal RESPONDENT

Date of Decision : 20-08-1990

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

Citation : (1991) 187 ITR 397

Hon'ble Judges : B.P. Jeevan Reddy, C.J;R.R. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Tribunal has referred the following two questions :

"(1) Whether, on the material on record, the Income Tax Appellate Tribunal could legally come to the conclusion that the assessee had discharged the burden which lay upon him in terms of the Explanation to Section 271(1)(c) of the Income Tax Act ?

(2) Whether, on the facts and under the circumstances of the case, the Income Tax Appellate Tribunal was legally correct in canceling the penalty of Rs. 20,000 imposed by the Inspecting Assistant Commissioner u/s 271(1)(c) of the Income Tax Act ?"

2. The assessee is an individual. He was a partner in Messrs. Hindustan Automobiles. Kanpur. He derived income both from the firm as well as certain interest income. He filed a return showing an income of Rs. 11,787 for the assessment year 1968-69. The Income Tax Officer completed the assessment on a total income of Rs. 1,29,838. He added Rs. 30,000 as income from undisclosed sources which included a deposit of Rs. 20,000 in the name of Shri Dilbagh Mehra. Having completed the assessment, the Income Tax Officer initiated penalty proceedings u/s 271(1)(c) of the Act. The assessee furnished an

explanation. The Income Tax Officer rejected the explanation and imposed a penalty against which an appeal was preferred before the Appellate Assistant Commissioner. It was dismissed. The matter was then carried to the Tribunal. The Tribunal, applying the ratio of the decision of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , found that mere rejection of the assessee''s explanation is not sufficient to impose penalty u/s 271(1)(c) of the Act, in the absence of any material on the basis of which a conclusion could be drawn that the assessee either concealed any income or filed inaccurate particulars of his income. The Tribunal found as follows :

"Even if the case of the Revenue is admitted that the entry appeared in the name of Shri Dilbagh Mehra and the assessee could not explain it, the penalty cannot be sustained. From the entry in the books of account itself, it is clear that the assessee took the alleged loan of Rs. 20,000 from Shri Dilbagh Mehra and the amount deposited in the books of account of the assessee was in the nature of a loan and it was not an income."

3. The Tribunal further found that the negative onus which lay upon the assessee was duly discharged in view of the Explanation to Section 271(1)(c) of the Act inasmuch as his return was supported by his books of account.

4. No reason is brought to our notice to disturb the said findings of the Tribunal. Once the said findings stand, in our opinion, the levy of penalty u/s 271(1)(c) of the Act is not valid.

5. Accordingly, we answer the two questions referred in the affirmative, i.e., in favour of the assessee and against the Department with no order as to costs.

