(1979) 04 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Income Tax Case No. 240 of 1975

Commissioner of Income Tax APPELLANT

Vs

R.K. Golecha RESPONDENT

Date of Decision : 06-04-1979

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

Citation : (1979) 118 ITR 674

Hon'ble Judges : C.M. Lodha, C.J;M.B. Sharma, J

Bench : Division Bench

Advocate : Sagar Mal Mehta, for the Appellant; S.K. Kesot, for the Respondent

Judgement

C.M. Lodha, C.J.—This is an application u/s 256(2) of the I.T. Act, 1961, for directing the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, to state the case and refer a question of law arising out of the. Tribunal''s order dated September 26, 1974, passed in Income Tax Appeal No. 454/JP/73-74 for the assessment year 1969-70, as the Tribunal had refused to do so by its order dated February 4, 1975, passed in Reference Application No. 195/JP/1974-75.

2. The assessee filed the return on December 29, 1970, whereas he was required to file it on or before 30th September, 1969. Thus, there was a delay of 14 months and 28 days. The ITO imposed a penalty of Rs. 7,232 u/s 271(1)(a)(i) of the I.T. Act, 1961. The assessee went in appeal but was unsuccessful. Consequently, he filed a second appeal and, as already stated above, the Income Tax Appellate Tribunal held that the assessee was under a bona fide belief that he may not be required to file the return, and further that there was no guilty intention on the part of the assessee in filing the return late. It is urged by Mr. Sagar Mal, counsel for the CIT, Rajasthan, Jaipur, that the firm, M/s. S. Zorastar & Co., filed application for registration on October 8, 1969, and submitted the return of income for the assessment year 1969-70 on December 9, 1969, as a registered firm. In these circumstances, there was no scope for the petitioner to think that he was not required to file the return as the firm was unregistered. It

is submitted that the conclusion drawn by the Tribunal is perverse and not rationally possible.

3. Having regard to the circumstances of the case, we are of opinion that the following question of law arises out of the order of the Tribunal :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that there was reasonable and sufficient cause on account of which the assessee was prevented from filing the return within limitation ?"

4. Hence, we allow the application and require the Tribunal to state the case and refer the question of law to this court within three months from the receipt of this order. No order as to costs.

