
(1987) 09 RAJ CK 0044
In the Rajasthan High Court
Case No : .I.T. Reference No. 25 of 1980

Commissioner of Income Tax

APPELLANT

Vs

R.K. Golecha

RESPONDENT

Date of Decision : 21-09-1987

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1988) 173 ITR 423 : (1988) 36 TAXMAN 235

Hon'ble Judges : J.S. Verma, C.J;I.S. Israni, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; S.K. Keshote, for the Respondent

Judgement

1. This reference at the instance of the Revenue is to answer the following question of law, namely :

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

2. The relevant assessment year is 1969-70. The assessee was a partner of a firm, M/s. S. Zoraster and Company. The assessee was required to file his return of income for this assessment year on or before September 30, 1969, but he filed it only on December 29, 1970. The Income Tax Officer initiated penalty proceedings u/s 271(1)(a) of the Act. The Income Tax Officer rejected the explanation of the assessee showing sufficient cause for the delay in filing the return and imposed penalty of Rs. 7,242 u/s 271(1)(a) of the Act. The Appellate Assistant Commissioner affirmed the Income Tax Officer's view and rejected the assessee's appeal. The Tribunal, however, allowed the assessee's appeal accepting the explanation given by the assessee to show the existence of sufficient cause for the delay in filing the return. The penalty was accordingly set aside. Hence, this reference at the instance of the Revenue.

3. The explanation of the assessee for showing sufficient cause for the delay in filing the return was that he was under a bona fide belief that the firm of which he is a partner, having been assessed in the status of an unregistered firm for the assessment years 1967-68 and 1968-69, the assessee was not required to file any return for the relevant assessment year 1969-70. The Tribunal accepted this explanation and held that this bona fide belief of the assessee constituted sufficient cause to explain the delay. In these circumstances, no question of law really arises since the finding on the question of existence of sufficient cause is really one of fact.

4. Learned counsel for the Revenue, however, contended that a question of law arises, inasmuch as the Tribunal erroneously placed the burden of proof on the Revenue instead of on the assessee. We are unable to accept this contention. All that the Tribunal has done is to hold that the bona fide belief of the assessee, which had a basis, constituted sufficient cause, which had not been rebutted by the Revenue by showing that the assessee's conduct was contumacious or deliberate. In other words, the Tribunal has rightly placed the burden on the assessee and held that the same had been discharged by the assessee. It has merely added thereafter that the Revenue had shown nothing to discharge the burden, which had been shifted by the assessee to the Revenue in this manner. There is thus no error of placing the burden on the Revenue instead of on the assessee.

5. In view of the above conclusion, it is obvious that on the finding of fact recorded by the Tribunal, its conclusion that the assessee had shown sufficient cause on account of which he was prevented from filing the return within limitation, is justified.

6. Consequently, the reference is answered in the affirmative by holding that the Tribunal's conclusion is justified. No order as to costs.