(1994) 04 RAJ CK 0054

In the Rajasthan High Court

Case No : Income Tax Reference Application No. 28 of 1993

Commissioner of Income Tax APPELLANT

Vs

Roy Durlabhji RESPONDENT

Date of Decision : 04-04-1994

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

Citation : (1995) 211 ITR 470

Hon'ble Judges : V.K. Singhal, J;Arun Madan, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; S. Kasliwal, for the Respondent

Judgement

1. The Revenue has prayed for the following question of law to be directed to be called for from the Income Tax Appellate Tribunal :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty of Rs. 4,53,990 levied u/s 271(1)(c) ?"

2. The reference application u/s 256(1) of the Income Tax Act, 1961, was dismissed on the ground that the additions which were made by the Income Tax Officer were finally deleted by the Income Tax Officer and the order of the Income Tax Appellate Tribunal was challenged u/s 256(2) of the Act before this court. The reference application submitted by the Revenue with regard to the additions had already been dismissed and learned counsel for the Revenue has informed that the matter has not been taken to the apex court and, therefore, the order passed by the Income Tax Appellate Tribunal deleting the additions has become final. In the present case, the Income Tax Appellate Tribunal has set aside the penalty on the ground that the additions have already been deleted and, therefore, no penalty can be levied. The reference application was also dismissed u/s 256(1) on the same ground. Since the matter with regard to the additions made in the quantum appeal no longer survives, it is not an appropriate case where a direction should be given to the Income Tax Appellate

Tribunal for making a reference u/s 256 in respect of penalty. As the matter of penalty is qua tax and there is no liability to tax, no penalty can be levied.

3. The reference application having no force is dismissed.

