
(2002) 01 P&H CK 0067
In the Punjab And Haryana At Chandigarh
Case No : Income Tax R. No. 94 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Sachdeva Steel Rolling Mills

RESPONDENT

Date of Decision : 04-01-2002

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2002) 254 ITR 168 : (2002) 122 TAXMAN 833

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.P. Sawhney and N.G. Sharma, for the Appellant; None, for the Respondent

Judgement

N.K. Sud, J.—The Income Tax Appellate Tribunal (for short "the Tribunal"), Amritsar Bench, has referred the following question u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), for determination by this court:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal had material before it for holding that penalty u/s 271(1)(c) of the Income Tax Act was not exigible in the instant case ?"

2. The relevant facts are that the assessee-firm is engaged in the business of steel rolling. For the assessment year 1977-78, the Income Tax Officer completed the assessment u/s 143(3) of the Act vide order dated March 22, 1980, wherein an addition of Rs. 30,000 was made in the returned income on account of unexplained cash credit appearing in the books of the firm in the name of one of its partners--Smt. Dev Ichhya. The Income Tax Officer had also initiated proceedings u/s 271(1)(c) of the Act for levying of penalty for concealment in respect of the aforesaid amount of Rs. 30,000. In the penalty proceedings, it was explained that Smt. Dev Ichhya had deposited Rs. 30,000 in her personal savings bank account with the Punjab National Bank, Jaitu, and the credit appearing in her capital account was on account of a cheque issued by her against the aforesaid account. The assessee, therefore, claimed that the credit

stood duly explained and could not have even been treated as income u/s 68 of the Act. It was further explained that the amount of Rs. 30,000 deposited by her in her bank account was out of her savings from household expenses, but had been offered to tax in her return for want of documentary evidence. Thus, it was pleaded that it could not be said to be a case of concealment of any income or furnishing of inaccurate particulars thereof. The Income Tax Officer rejected the explanation and levied a penalty of Rs. 18,340 vide his order dated March 30, 1982.

3. The assessee preferred an appeal before the Commissioner (Appeals), Jalandhar, who, vide his order dated September 24, 1983, allowed the same. The Commissioner of Income Tax (Appeals) held that the Income Tax Officer had overlooked the distinction between the nature of penalty proceedings and assessment proceedings and had not considered the evidence regarding the source of the cash credit in the proper perspective. He further held that there was no legal basis for his finding that the cash credit, which is added to the assessment, must be treated as concealed income of the assessee. According to him, Explanation 1 to Section 271(1) had been wrongly invoked as there was no evidence of concealment of income to warrant levy of penalty u/s 271(1)(c).

4. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Tribunal which was dismissed vide order dated October 19, 1984. The Tribunal found that Smt. Dev Ichhya was having a capital of Rs. 88,854 in the firm for the year under appeal and that her gross wealth was about Rs. 1,79,902. Thus neither her identity nor her financial status could be doubted and, therefore, the firm had duly discharged the onus of proving the genuineness of the cash credit. The amount had been advanced by her by issuing a cheque from her savings bank account. Therefore, the source of credit stood fully explained. The assessee-firm could not possibly be called upon to explain the source of credit in the bank account of the creditor. It was held that "apart from suspicion and surmises of the Assessing Officer, there was no material in support of the fact that the amount had come from unaccounted funds of the assessee-firm itself."

5. We are in total agreement with the approach of the Tribunal. The findings of the Tribunal are essentially findings of fact and are based on material on record. Learned counsel for the Revenue has not been able to point out any infirmity in the same. Thus, it cannot be said that the Tribunal had no material before it for holding that penalty u/s 271(1)(c) of the Act was not exigible in the instant case. The question referred to us is, therefore, answered in the affirmative, i.e., against the Revenue and in favour of the assessee. Since no one has put in appearance on behalf of the assessee, there shall be no order as to costs.