
(1979) 10 RAJ CK 0002

In the Rajasthan High Court

Case No : IT Case No. 56 of 1979 & Income Tax Reference Case No. 56 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Sah Swaroop Narain

RESPONDENT

Date of Decision : 10-10-1979

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 271(1)(c)

Citation : (1980) 3 TAXMAN 285

Hon'ble Judges : Lodha, C.J

Bench : Single Bench

Advocate : S.M. Mehta, for the Appellant; N.M. Ranka and V.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Lodha, C.J.—This is an application u/s 256(2) of the income tax Act, 1961 (hereinafter to be referred to as "the Act"), praying that the Income tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter to be referred to as "the Tribunal"), be directed to state the case and refer the following questions of law to this court arising out of the Tribunal's order dated July 30, 1977 : (1) Whether, on the facts and in the circumstances of the case and in view of the provisions contained in section 271(1)(c) of the income tax Act, 1961, and the Explanation thereto, the Tribunal was right in law in cancelling the penalty imposed on the assessee?

(2) That the order of the Tribunal is legally perverse as it has failed to consider its own order passed in quantum appeal which is a relevant piece of evidence?

Let us now turn to the facts of the case. For the assessment year 1972-73, the assessee filed a return declaring a loss of Rs. 1,769. In the course of the assessment proceedings, the ITO noticed a cash credit of Rs. 17,000, in the name of Gauri Shankar Mittal. The ITO examined Gauri Shanker Mittal and came to the conclusion that Gauri Shanker Mittal was not in a position to make a large

deposit of Rs. 17,000. Consequently, he added Rs. 17,000 to the income of the assessee as income from undisclosed source. The assessee filed an appeal before the AAC and produced additional evidence before him. He examined one Shri Nathu Ram, through whom the deposit in question is said to have been made. The AAC did not accept the assessee's explanation and upheld the order of the ITO. The assessee took the matter further to the Appellate Tribunal but was unsuccessful. The ITO had also initiated penalty proceedings u/s 271(1)(c) of the Act and since the minimum penalty leviable exceeded Rs. 1,000, he referred the matter to the IAC concerned. The assessee produced evidence before the IAC to prove that the cash credit entry was genuine, but the IAC did not accept the assessee's explanation and imposed a penalty of Rs. 18,260.

2. Aggrieved by the order of the IAC, the assessee filed an appeal before the income tax Appellate Tribunal, Jaipur Bench, Jaipur. The Tribunal allowed the appeal and held that the presumption against the assessee provided in the Explanation to section 271(1)(c) of the Act had been rebutted by the evidence produced by the assessee. In this view of the matter, it set aside the order of the IAC imposing penalty on the assessee. Thereupon, the revenue filed an application u/s 256(1) of the Act for referring to this court the above extracted questions of law. This application was dismissed on the ground that the finding arrived at by the Tribunal was one of pure fact. In these circumstances, the Commissioner has filed this application u/s 256(2).

3. Learned counsel for the revenue has strenuously urged that the finding arrived at by the Tribunal is perverse inasmuch as it has not taken into consideration the effect of the Explanation to section 271(1)(c) of the Act. He has also argued that the Tribunal has ignored the finding arrived at in the assessment proceedings in pursuance of which Rs. 17,000 has been added as the assessee's undisclosed income. In support of this contention, he has relied upon Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali,

4. We have carefully scrutinized the appellate order of the Tribunal and find that the Tribunal was very much alive to the Explanation to section 271(1)(c) of the Act. It has observed that the Explanation no doubt provides for a presumption against the assessee but it is a rebuttable presumption. The proposition of law, as stated by the Tribunal, regarding the interpretation of the Explanation, is correct and has not been disputed before us. The Tribunal has then observed that it would depend on the facts and circumstances of each case whether the presumption has been rebutted. The Tribunal has also observed that the entire circumstances have to be taken into consideration for deciding the question of imposition of penalty. Having said so, the Tribunal has proceeded to examine the facts of the case and has observed that the explanation regarding the entry in question given by the assessee is supported by the two witnesses produced by him, namely, the depositor and the broker, through whom the deposit had been made. It has held that this evidence was sufficient to rebut the presumption raised against the assessee. The Tribunal has also observed that the evidence

recorded in the assessment proceedings and the findings thereon may also be taken into consideration. There also, the Tribunal has not fallen into any error. Thus after having taken into consideration the evidence produced by the assessee and the entirety of circumstances, it has come to the conclusion that in the absence of positive evidence from the side of the revenue that the amount of Rs. 17,000 was derived from an undisclosed source, no penalty can be imposed. It is sufficient to point out that the finding of fact arrived at by the Tribunal after a correct application of the principles of law cannot give rise to a substantial question of law for which reference may be called. To believe or not to believe certain evidence was perfectly within the jurisdiction of the Tribunal.

5. In Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, it was observed that it would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false, does not necessarily give rise to the inference that the disputed amount represents income. It cannot be said that the finding given in the assessment proceedings for determination or computing the tax is conclusive. However, it is good evidence. Their Lordships went on to observe that before penalty can be imposed, the entirety of the circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

6. In the present case, the contention raised on behalf of the revenue that the finding is perverse is not at all substantiated. This application is, therefore, dismissed, but there will be no order as to costs.