
(1996) 07 RAJ CK 0035

In the Rajasthan High Court

Case No : Income Tax Reference No. 28 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Sant Das Nihal Chand

RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 132(5), 143(3), 148, 256, 271(1)

Citation : (1997) 226 ITR 224 : (1997) 92 TAXMAN 408

Hon'ble Judges : J.C. Verma, J;B.R. Arora, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant;

Judgement

1. The Revenue, by this application u/s 256(2) of the Income Tax Act, 1961, has prayed that the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, may be directed to state a case and refer the following question of law for the opinion of the High Court, which according to the Revenue, arises out of the order passed by the Tribunal :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in cancelling the penalty levied u/s 271(1) (c), when concealment of the income and modus operandi by the assessee has been proved ?"

2. The assessee, Santdass Nihal Chand, Station Road, Jodhpur, is a registered firm, a dealer of Godfrey Philips India Limited. For the assessment year 1984-85, the assessee was assessed u/s 143(3) of the Act on the returned income of Rs. 84,474. Subsequently, a search was conducted in the business premises of the firm as well as the residential premises of the partners of the firm. Certain incriminating documents were found which disclosed that a substantial amount of "on money" was received by the assessee on the sales of cigarettes, which were not accounted for by the assessee in the books of account. The Income Tax Officer, Special Investigation Circle, Jodhpur, therefore, issued a notice u/s 148

read with Section 147(a) of the Income Tax Act to the assessee. In response to this notice, the assessee filed the return showing the income of Rs. 84,470. In the order passed u/s 132(5) of the Act, the Income Tax Officer determined the concealment of "on money" to the tune of Rs. 12,196 during the assessment year 1984-85. The assessee, during the reassessment proceedings, agreed for an addition of Rs. 12,196 on account of "on money" which was not disclosed by it in the return. The assessing authority, vide its order dated June 5, 1989, reassessed the assessee on a total income of Rs. 96,660. While passing the reassessment order, the Assessing Officer also initiated penalty proceedings u/s 271(1)(c) of the Act and after giving an opportunity of hearing to the assessee, imposed a penalty of Rs. 7,880.

3. Dissatisfied with the order dated January 2, 1990, passed by the Income Tax Officer, Ward-1, Jodhpur, the assessee preferred an appeal, which was dismissed by the Deputy Commissioner of Income Tax (Appeals), Jodhpur. The Deputy Commissioner of Income Tax (Appeals) dismissed the appeal filed by the assessee and confirmed the penalty imposed by the Assessing Officer.

4. Aggrieved by the order passed by the Deputy Commissioner of Income Tax (Appeals), Jodhpur, the assessee filed an appeal before the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur. The Tribunal allowed the appeal filed by the assessee and held that the surrendered amount of Rs. 12,196 did not represent the assessee's concealment of income and, therefore, it was not a fit case for levying the penalty u/s 271(1)(c) of the Act. The Revenue, aggrieved by the order dated April 20, 1994, passed by the Tribunal, moved an application u/s 256(1) of the Act before the Tribunal and prayed that the question of law mentioned in the application, which arises out of the order passed by the Tribunal, may be referred for adjudication to the High Court. The Tribunal, by its order dated July 13, 1995, refused to refer the question proposed by the Revenue and dismissed the application filed by the Revenue.

5. The Tribunal refused to refer the question proposed by the Revenue on the ground that the findings of the Tribunal that the surrendered amount of Rs. 12,196 did not represent the assessee's concealed income, are purely findings of fact and no question of law arises. The Tribunal further observed that the question sought to be referred is a pure question of fact.

6. The findings arrived at by the Tribunal are not based on conjectures or surmises but are based on a proper appreciation of the evidence. The mere fact that the amounts were agreed to be added in the income of the assessee, does not ipso facto indicate any intention on the part of the assessee to conceal any portion of its income. The Tribunal has also considered all the facts and circumstances of the case and the admission made by the assessee. The assessee has only accepted certain amount as taxable but it was not accepted by the assessee that it has deliberately furnished an incorrect particular or concealed any income. The Tribunal, while allowing the appeal filed by the assessee, has not acted on any material which was not relevant to the case nor

is the judgment of the Tribunal based on conjectures or surmises or suspicion. The findings arrived at by the Tribunal are purely findings of fact and no question of law does arise. Merely because a different view can be taken that does not give rise to any question of law.

7. In this view of the matter, we do not find any merit in this application u/s 256(2) of the Act filed by the Revenue and the same deserves to be dismissed. No case for directing the Tribunal to state the case and refer the question, which is purely a question of fact, does arise in this case.

8. In the result, we do not find any merit in this application and the same is hereby dismissed.