(1994) 09 DEL CK 0016

In the Delhi High Court

Case No : Income-tax Reference No. 277 of 1977

Commissioner of Income Tax APPELLANT

Vs

Sh. Thakur Dass RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Citation : (1995) 213 ITR 205 : (1995) 78 TAXMAN 258

Hon'ble Judges : K. Shivshankar Bhat, J;D.K. Jain, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

K. Shivashankar Bhat, J.—In respect of the assessment year 1968-69, the following question has been referred u/s 256 of the Income Tax Act, 1961, for our consideration :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in cancelling the penalty of Rs. 13,000 levied u/s 271(1)(c) of the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the principle laid down by the Supreme Court in the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, was applicable in the instant case particularly when the return of income was filed after insertion of the Explanation to section 271(1) which came into force on April 1, 1961 ?"

2. Instead of narrating the facts, the relevant part of the order of the Appellate Tribunal could be read :

"The assessed is an individual and the assessment relates to the assessment year 1963-64, the relevant previous year of which ended on March 31, 1963. The assessed was deriving income from kirana business and commission, besides he claimed he was a partner in an unregistered firm called Thakur Dass Manohar

Lal. It appears, the assessment on the assessed was originally completed on a total income of Rs. 13,345 on November 12, 1964. Though it was claimed that the firm of Messrs. Thakur Dass Manohar Lal was a genuine firm with four partners including the assessed, the Income Tax Officer assessing the firm treated it as the individual business of the assessed and held that other two partners, Thakur Dass Kathuria and Devi Dass, as his benamidars. There were cash deposits of Rs. 6,500 each in their accounts in the books of the said firm. The Income Tax Officer treated these cash deposits as the unexplained income of the said firm and taxed it. In the appeal filed by the said firm before the Appellate Assistant Commissioner deleted the addition of Rs. 13,000 on the view that since those two partners were held to be benamidars of the assessed, the proper course would be to consider those credits in the hands of the assessed. To bring to tax the said cash credit as income of the assessed, proceedings were taken u/s 148 in response to which the assessed filed return disclosing the income of Rs. 6,050 on May 2, 1968. In the reassessment made by the Income Tax Officer, the sum of Rs. 13,000, i.e., the credits, in the of Thakur Dass and Devi Dass, were treated as the unexplained income of the assessed and that they did not belong to the person in whose accounts they appeared. The order of the Income Tax Officer is made annexure ''A'' and forms part of the case. The Income Tax Officer also initiated proceedings for the levy of Rs. 13,000 as income concealed. The Income Tax Officer referred the matter to the Inspecting Assistant Commissioner for the levy of penalty as he found the minimum penalty livable exceeded Rs. 1,000."

3. It is necessary to note that the relevant year looks to be 1963-64, but the assessed filed the return after 1964 only, in response to a notice issued in the year 1968. The return was filed on October 19, 1968. If so it is clear that the Explanation added to section 271(1) would govern the return filed by the assessed. The scope of this Explanation was considered by the Supreme Court in Commissioner of Income Tax (Additional), Lucknow Vs. Jeevan Lal Sah, , wherein the Supreme Court has held that the decision in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, is no longer good law.

4. Having regard to the aforesaid decision the question referred to us shall have to be answered in the negative and in favor of the Revenue. The reference is answered accordingly.

