(2001) 09 RAJ CK 0008

In the Rajasthan High Court

Case No : Income Tax Reference No. 17 of 1992

Commissioner of Income Tax APPELLANT

Vs

Shishpal RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 274, 69

Citation : (2002) 255 ITR 187 : (2003) 126 TAXMAN 5

Hon'ble Judges : O.P. Bishnoi, J;N.N. Mathur, J

Bench : Division Bench

Advocate : Sundeep Bhandawat, for the Appellant; Arun Bhansali, for the Respondent

Judgement

N.N. Mathur, J.—This is a reference made at the instance of the Revenue u/s 256(1) of the Income Tax Act, 1961, to answer the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the learned Members of the Income Tax Appellate Tribunal were legally justified in confirming the order passed by the Commissioner of Income Tax (Appeals) that when the additions on the basis of which the penalty imposed has been deleted, the penalty does not survive and is cancelled ?"

2. The necessary facts are that the assessee was apprehended by the customs authorities at Banner on May 16, 1979, and was found possessing precious stones of the value of Rs. 64,503. Since the assessee could not prove the acquisition/source of investment in the precious stones, the Income Tax Officer brought to tax the unexplained investment by resorting to Section 69 of the Income Tax Act, 1961, and directed for issuance of penalty notice including notice u/s 274 read with Section 271(1)(c) of the Income Tax Act, 1961. He had levied a penalty of Rs. 32,256 by order dated June 19, 1985. The Commissioner of Income Tax (Appeals) cancelled the entire penalty on the basis that while the addition in the quantum appeal itself was deleted, there was no case for penalty

u/s 271(1)(c) of the Income Tax Act.

3. The Department preferred an appeal before the Tribunal against the said order. The Tribunal upheld the order of the Commissioner of Income Tax (Appeals).

4. It is agreed by both learned counsel for the parties that the question sought to be referred in this reference application has been answered by the Division Bench of this court in Income Tax Reference No. 35 of 1980--CIT v. Sukhdeo Chanty Estate. We are in complete agreement with the decision of the Division Bench in CIT v. Sukhdeo Charily Estate. Once the very foundation for imposition of penalty has become nonexistent the addition, was not justified.

5. In view of the aforesaid, it is now unnecessary to answer the above question of law. The reference application accordingly stands disposed of. No order as to costs.

