(1990) 10 PAT CK 0007

In the Patna High Court

Case No : Tax Case No. 31 of 1979

Commissioner of Income Tax APPELLANT

Vs

Smt. Bimla Devi Sharma RESPONDENT

Date of Decision : 17-10-1990

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

Citation : (1991) 93 CTR 181 : (1991) 192 ITR 482

Hon'ble Judges : G.G. Sohani, C.J;G.C. Bharuka, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; Narayan Prasad Agrawal and Nilu Agrawal, for the Respondent

Judgement

G.G. Sohani, C.J.—By this reference u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, ''B'' Bench, Patna, has referred the following question of law to this court for its opinion :

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in cancelling the penalty for the assessment year 1969-70 imposed u/s 271(1)(c) read with the Explanation thereto of the Income Tax Act, 1961 ?"

2. The material facts giving rise to this reference, briefly, are as follows :

The assessee was assessed in the status of an individual for the assessment year in question. After framing the assessment, the Income Tax Officer initiated penalty proceedings against the assessee u/s 271(1)(c) of the Act. The Income Tax Officer held that the claim for deduction of Rs. 11,586 made by the assessee on account of interest paid on loans was not justified and the Income Tax Officer, therefore, imposed penalty of Rs. 11,586 on the assessee. Aggrieved by that order, the assessee preferred an appeal before the Appellate Assistant Commissioner of Income Tax. That appeal was allowed. Aggrieved by the order passed by the Appellate Assistant Commissioner, the Revenue preferred an appeal before the Tribunal. It was contended on behalf of the Revenue that though the assessee was deriving income from business, the assessee had not utilised the loans from various parties for business purposes but the loans were utilised for construction of the property and hence the claim for deduction of interest made by the assessee was not justified: It was, therefore, contended that the Income Tax Officer had rightly found that the assessee was guilty of concealment of income. The Tribunal, however, did not uphold this contention and dismissed the appeal. Aggrieved by the order passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

3. After hearing learned counsel for the parties, we have come to the conclusion that this reference must be answered in the affirmative and against the Revenue. The only contention raised before the Tribunal on behalf of the Revenue was that the expenditure claimed by the assessee on account of payment of interest on loans was not justified and as the assessee was not entitled to claim that deduction, the assessee must be held to have concealed his income. The Tribunal, however, held, after appreciating the material on record, that it was not a case of concealment of income. In view of this finding by the Tribunal, it must be held that the Tribunal was justified in cancelling the penalty for the assessment year 1969-70.

4. My answer to the question referred to this court, therefore, is in the affirmative and against the Revenue. In the circumstances of the case, the parties shall bear their own costs of this reference.

5. Let a copy of this judgment be sent by the Registry of this court to the Assistant Registrar, Income Tax Appellate Tribunal, Patna.

G. C. Bharuka, J.

6. I agree.