(1978) 07 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No''s. 11 (M) and 12 (M) of 1978

Commissioner of Income Tax APPELLANT

Vs

Smt. Chhagni Devi Dhada RESPONDENT

Date of Decision : 07-07-1978

Acts Referred:
Income Tax Act, 1961 — Section 256(2)

Citation : (1978) 07 GAU CK 0001

Hon'ble Judges : C.M. Lodha, C.J;D. Pathak, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukdar, for the Appellant; J.P. Bhattacharjee and B.R. De, for the Respondent

Judgement

Lodha, C.J.—This is an application by the Commissioner of Income Tax, North-Eastern Region, Shillong, u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for requiring the Appellate Tribunal to state the case and refer the following questions of law to this court;

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that penalty orders passed by the Income- tax Officer as cancelled by the Appellate Assistant Commissioner of income tax cannot be restored ?

(ii) Whether, on the facts and in the circumstances of the case and particularly in view of the admission made by the assessee in the revised returns which were filed after the cases were subjected to enquiry and investigation by the Income Tax Officer, penalties u/s 271(1)(c) were not rightly attracted ?"

2. The short facts giving rise to this application may be stated as under:

The assessee filed returns for the assessment years 1968-69 and 1969-70, on November 5, 1968, and December 31, 1969, respectively, showing an income of Rs. 5,317 and Rs. 5,356, respectively. On March 1, 1971, shefiled a revised return for both the years showing the income for the year 1968-69, as Rs.

15,830 and for the year 1969-70, as Rs. 14,800. The additional income shown by the assessee represented the share of her minor child in the income of a firm. The Income Tax Officer initiated proceedings for imposition of penalty for both the years and issued notice to the assessee to show cause why penalty be not imposed for concealment of income and ultimately imposed a penalty of Rs. 12,000 for the assessment year 1968-69 and Rs. 10,000 for the year 1969-70.

3. Dissatisfied with the order of the Income Tax Officer, the assessee filed appeals before the Appellate Assistant Commissioner who allowed the same and set aside the penalties imposed by the Income Tax Officer. Aggrieved by the order of the Appellate Assistant Commissioner, the revenue went in appeal to the Tribunal which, however, upheld the order of the Appellate Assistant Commissioner, and dismissed the appeal. Thereupon, the Commissioner made an application u/s 256(1) of the Act before the Tribunal for stating the case and referring the questions of law extracted above to this court. The Tribunal dismissed the application holding that the questions raised by the Commissioner were pure questions of fact and since no question of law arose out of its order, it refused to state the case and refer any question to this court. Hence, this application u/s 256(2) of the Act.

4. The learned counsel for the Commissioner has strenuously urged that the two questions submitted by him do arise out of the order of the Tribunal. It is argued that the assessee had initially concealed a portion of her income, which she was bound to disclose, and, later on, filed a revised return to cover the concealment. On the other hand, Mr. J. P. Bhattacharje, learned counsel for the assessee, has submitted that the Tribunal has arrived at the conclusion that there was no concealment of income and the revised return had been filed by the assessee without any concealed income having been detected by the Income Tax. Officer and, consequently, on these findings of fact no question of law arises. It is submitted that it is not open to the applicant to raise before this court new questions of law which he has not raised before the Tribunal in his application u/s 256(1) of the Act. In support of his contention he has relied on the decisions in India Cements Ltd. Vs. Commissioner of Income Tax, Madras, , Hazarat Pirmahomed Shah Saheb Roza Committee Vs. Commissioner of Income Tax, Gujarat, and Commissioner of Income Tax, Bombay City I Vs. Greaves Cotton and Co. Ltd., . We do not consider it necessary to discuss the authorities relied upon by the learned counsel for the assessee, as, in our opinion, the position is well settled that findings of fact arrived at by the Tribunal are binding upon this court in exercise of its jurisdiction u/s 256(2) of the Act.

5. Now, in the present case, the Tribunal has found that the assessee had not concealed any income and had voluntarily filed the revised return without any investigation or detection by the department. The learned counsel for the applicant has not been able to satisfy us that this finding is perverse or is based on no material. It is trite that the burden of proving concealment of income on the part of the assessee, lies on the department and, in the absence of any

evidence to that effect, we see no justification for not accepting the finding of the Tribunal that there was no concealment of income by the assessee. Then, again, it has been submitted by Mr. Bhattacharjee that the facts assumed in question No. (ii) suggested by the applicant are not correct and in support of his contention he has relied upon the following observation by the Tribunal:

"This question merely proceeds on a contrary assumption in spite of the said finding of the Tribunal without even challenging the finding by referring to any evidence to the contrary."

6. Learned counsel for the applicant was unable to point out that it was on account of any investigation or detection by the Income Tax Officer that the revised return including the minor child''s income was filed by the assessee. In these circumstances, we see no force in this application and hereby dismiss it, but without any order as to costs.

