(1999) 02 MP CK 0009

In the Madhya Pradesh High Court

Case No : IT Ref. No. 99 of 1998 10th February, 1999

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

SMT. PADMA DEVI JAIN — RESPONDENT

Date of Decision : 10-02-1999

Acts Referred:
Income Tax Act, 1961 — Section 256, 271

Citation : (2000) 158 CTR 278 : (2002) 123 TAXMAN 1074

Hon'ble Judges : Shambhoo Singh, J;B.A. Khan, J

Bench : Full Bench

Judgement

B. A. KHAN, J.

Revenue has filed this application u/s 256(2) of Income Tax Act for calling statement of the case from Tribunal, Indore Bench on the following stated questions of law, arising out of Tribunal order dt. 29th Aug., 1997 :

1. Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in law in upholding cancelIation of penalty of Rs. 1, 1). 000 u/s 271(1)(c).

2. Whether, on the facts and in the circumstance of the case, the Hon''ble Tribunal was justified in law in confirming Hon of the, penalty of Rs. 1,15,000 levied by the assessing officer u/s 271(1)(c) of the Income Tax Act holding that there is no mens rea of the assessee to conceal the income or to furnish inaccurate particulars of income, although the statutory provisions relating to levy of penalty u/s 271(1)(c) do not have any such condition relating to mens rea ?

3. Whether on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in law in confirming cancellation of the penalty u/s 271(1)(c) of the Act even when the material available on records clearly established that the assessee had claimed a liability which she was not liable to bear and of which legal position, the assessee was already aware under the terms of

dealership and as such deduction, in the matter, was wrongly claimed?"

2. It transpires that assessee had claimed interest payment of Rs. 7,19,164 to Escorts Ltd. on the outstanding bills and delayed payments. She had filed a detailed chart of interest payment and three certificates from M/s Escorts Ltd. in support of her claim. However, M/s Excorts Ltd. later on issued a clarification regarding assessment year 1989-90 and on scrutiny it was found that out of the claimed amount, M/s Escorts Ltd. had credited an interest of Rs. 2,12,162 to the assessee''s account. Upon this she was asked to explain why this interest amount be not added towards her disclosed income as it was claimed by her in the P&L a/c. It was explained by her that the interest amount would be offered for taxation for the ensuing assessment year1991-92. The assessing officer rejected her claim and made addition of this amount and initiated penalty proceedings against her u/s 271(1)(c) of the Act. She took an appeal before Commissioner (Appeals) who vide detailed order dt. 3rd April, 1992, accepted her explanation and concluded that the return filed by the assessee could not be treated false in the facts and circumstances of the case. It was found by him that assessee had not made any wrong claim for interest, nor had she furnished any inadequate particulars of her income. On the contrary, it was on the basis of the facts furnished by her that assessing officer had come to know about the disputed overcharge interest amount.

3. It was further observed by him that where the assessee did not include any particular item in taxable income under bona fide belief, it would not be justified to condemn the return as false to invite penalty.

4. Revenue took appeal against this to Tribunal which affirmed the finding of Commissioner (Appeals). While doing so it made a passing observation that there was no deliberateness or mens rea in assessee''s action to treat her return as false. Revenue took objection to this and sought reference of the above stated questions to this Court. Tribunal rejected the application and in our view rightly.

5. Revenue counsel Shri Pawnekar submitted that after deletion of word "deliberate" from s. 271(1)(c), Tribunal could not have given a clean chit to the assessee by confirming the cancellation of penalty. Reliance in this regard was placed on a Full Bench judgment of Patna High Court in Commissioner of Income Tax Vs. Nathulal Agarwala and Sons, interpreting the amendment made in the explanation appended to s. 271(1)(c).

6. It appears to us that the controversy involving use of the words "deliberate" and "mens rea" does not assume importance for purposes of deciding the fac of this application and any effort to dig deep into it would eventually turn out to be totally academic. This is so because Commissioner (Appeals) and Tribunal had in fact accepted the explanation of the assessee regarding the overcharged interest amount and her bona fides and had returned findings of fact in the facts and circumstances of the case that her return could not be branded false inviting imposition of penalty. Therefore, it becomes futile to examine whether or not any

element of deliberateness or mens rea in the action of an assessee was a prerequisite to be satisfied to invite penalty proceedings. Determination of this issue could await an appropriate proceeding. For the present, we do not feel inclined to call for the statement of the case on any of the questions stated above. This application is accordingly rejected.