(2003) 04 RAJ CK 0012

In the Rajasthan High Court

Case No : IT Ref. No. 30 of 1985 & Income Tax Reference No. 30 of 1985 21 April 2003

Commissioner of Income Tax APPELLANT

Vs

Smt. Shakuntala Devi RESPONDENT

Date of Decision : 21-04-2003

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

Citation : (2003) 130 TAXMAN 192

Hon'ble Judges : Y.R. Meena, J;Shashi Kant Sharma, J

Bench : Full Bench

Advocate : J.K. Singhi and Anuroop Singhi, for the Revneue and Vivek Singhal, for the Assessee, for the Appellant;

Judgement

On an application u/s 256(1) of the Income Tax Act, 1961. Tribunal has referred the following question for the opinion of this court :

"Whether in the facts and circumstances of the case, the Tribunal was justified in cancelling the penalty of Rs. 85,000 imposed by the Inspecting Assistant Commissioner u/s 271(1)(c) of the Income Tax Act, 196l?"

2. The assessee late Dr. L.M. Simlot was a medical practitioner. The relevant assessment year is 1966-67. In that year, he was also an employee of the Government of Rajasthan. In the returns, he has shown income from salary as well as from private practice.

3. The assessee did not maintain any regular books of accounts in respect of his private practice. The assessee filed returns and those returns were revised thrice and different figures of income has been shown in the returns. The Income Tax Officer had in his possession information that the assessee had issued certificates to the employees of postal department and gross receipts were Rs. 1,09,489. This fact was brought to the notice of the assessee. He simply replied that he has not received the total amount of receipts issued by him, but he has received only

the amount he has shown in the returns. Income Tax Officer has taxed the income of Rs. 1,09,489 as income from profession. That has been upheld by the Appellate Assistant Commissioner. In appeal, the Tribunal has reduced this figure from private practice to Rs. 1,05,000.

4. The penalty proceedings u/s 271(1)(c) of the Income Tax Act has been initiated and after hearing and considering the submissions, the assessing officer has imposed the penalty of Rs. 85,000. That penalty has been cancelled by the Tribunal finally in the appeal. While cancelling the penalty, the Tribunal observed as under:

"It would, in our opinion, be not possible to say that the assessee was trying to withhold primary facts from the department with a view to conceal his income. If the assessee had not indicated the gross realisable fees in the very first return and his actual realisations there from there could have been some justifications for the charge of concealment. But when he showed the figure of gross realisables as well as the actual realised amount, according to him, he placed the facts as he saw them at the relevant time before the department squarely and, in our opinion, it would not be realisble to say, on these facts, that the assessee had attempted to conceal particulars of his income or to furnish in accurate particulars of his income. We, therefore, feel that, on the facts of the present case, the imposition of penalty in terms of section 271(1)(c) was not justified. We accordingly cancel it".

5. Mr. Singhi, learned counsel for the department submits that as assessee has received Rs. 1,08,489 from the employees of the various departments and that has been confirmed from those concerned departments, there is a clear case of concealment and Tribunal has wrongly cancelled the penalty.

6. Mr. Singhal, learned counsel for the assessee submits that though the assessee has issued the receipts of that amount to the employees but they have not paid that much amount to him. Therefore, he has shown only Rs. 43,802 as receipts from government employees. He supported the order of Tribunal.

7. The details of the income of assessee as shown in the original return and 3 revised return reads as under :

Date of filing return

Income from Salary

Rs.

Income from Profession

Rs.

Total

Rs.

Original 16-11-1966

5,299

50,000

55,299

Revised 31-12-1966

4,550

48,802

53,352

Revised 31-8-1967

5,299

25,000

30,299

Revised 12-4-1968

4,550

43,802

53,352

8. The case of the assessee that he has shown in the return, gross receipt of Rs. 93,000 and the net receipt of Rs. 43,802 in the final revised return.

9. Even if we give benefit to him to the fact that he has disclosed these particular figures. On those figures no case of concealment of income is made out, but that can be accepted uptil the amount he has show i.e. Rs. 93,802. But there is no explanation for the concealment of income to the tune of Rs. 11,198 i.e. a difference of gross income he has shown in return ie. Rs. 93,802 and the final figure of income from profession i.e. Rs. 1,05,000 taken by the Tribunal.

10. There is no further challenge of that addition. Therefore, even if we accept the explanation that there was no concealment for penalty uptil Rs. 93,802 as income from profession, but figure exceeding that amount is definitely a concealment of income and liable for the penalty u/s 271(1)(c) of the Act, for which there is no explanation.

11. In the result, we answer the question that Tribunal was justified in cancelling the penalty of Rs. 85,000 imposed by the Inspecting Assistant Commissioner, but considering the admitted facts there was a concealment of income of Rs. 11,198, the penalty is thus reduced to the figure of Rs. 11,198. We answer accordingly.

