(2005) 04 AHC CK 0244

In the Allahabad High Court

Case No : IT Reference No. 57 of 1995

Commissioner of Income Tax APPELLANT

Vs

Sridhar Ram Das RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:
Income Tax Act, 1961 — Section 139, 256, 271B, 44AB

Citation : (2006) 157 TAXMAN 452

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The ITAT, Allahabad, has referred the following two questions u/s 256(1) of the Income Tax ,Act, (hereinafter referred to as the Act) for opinion to this Court:

1. Whether in view of the facts an circumstances of the case, the Tribunal was right in cancelling the penalty order u/s 271B when the assessee has obtained the audited accounts on 31-10-1989 and not submitted the same on the plea that the assessees accountant was indisposed?

2. Whether, on the facts and in the circumstannces of the case, the assessee was under obligation to file his audited account within the time allowed u/s 139(1) of the Act?"

The matter relate to the assessment year 1989-90.

2. The present reference arises out of proceeding u/s 271B of the Act. The respondent-assessee filed return of income along with audit report on 11-1-1990. The return was filed beyond the time prescribed by Sub-section (1) of Section 139 of the In reply to the show-cause notice, it was stated that the respondent-assessee was obliged to get its account audited on or before 31-10-1990, which in fact, they did. The audit report was obtained within prescribed date, i.e., before 31-10-1990, It is dated 31-10-1990. The Income

Tax Officer levied penalty u/s 271B of the Act, which was set aside in appeal by the Commissioner (Appeals). The said order has been confirmed by the Tribunal.

3. Heard learned standing counsel for the department. We find that the controversy stands concluded by decisions of a Division Bench of this Court in the cases of Commissioner of Income Tax Vs. Gramin Sadhan, and Commissioner of Income Tax Vs. Jai Durga Construction Co., . It has been held that u/s 44AB, as it stood during the assessment year under consideration, the assessee was required to got its account audited by the accountant before the specified date. There was no obligation to furnish audit report before the assessing authority before the specified date. This obligation has been created by substituting the words "furnished by" for the words "obtained before" by the Finance Act, 1995 with effect from 1-7-1995. Thus, prior to the amendment obligation of the asscssee to whom u/s 44AB applied was merely to get the account audited and get the audit report before the specified date. In the present case, there is no dispute that the assessee complied with these requirements. Therefore, we are of the opinion that in such circumstances no penalty u/s 271B can be levied on the respondent.

4. We accordingly answer the question referred to us, in affirmative, i.e., in favour of the assessee and against the revenue. There will be however no order as to costs.

