(1984) 06 KAR CK 0023

In the Karnataka High Court

Case No : Income-tax Referred Case No. 110 of 1982

Commissioner of Income Tax — APPELLANT

Vs

Sujatha Industries — RESPONDENT

Date of Decision : 11-06-1984

Acts Referred:
Income Tax Act, 1961 — Section 256 (1), 271 (1) (c), 274 (2)

Citation : (1987) 60 CTR 75 : (1987) 163 ITR 263 : (1986) 26 TAXMAN 449

Hon'ble Judges : S.A. Hakeem, J;Mohammad Sharif, J

Bench : Division Bench

Advocate : H. Raghavendra Rao, for the Appellant; G. Sarangan, for the Respondent

Judgement

Jagannatha Shetty, J.

1.This is a reference u/s 256(1) of the Income Tax Act, 1961.

2. At the instance of the Department, the following question has been referred by the Tribunal :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in cancelling the penalty levied by the Inspecting Assistant Commissioner u/s 271(1)(c) holding that the Inspecting Assistant Commissioner had no jurisdiction to levy penalty u/s 271(1)(c) in view of the changed provisions of law ?"

3. The matter relates to levy of penalty for the assessment year 1971-72. The penalty was levied by the Inspecting Assistant Commissioner u/s 271(1) of the Income Tax Act. He levied a penalty of Rs. 15,187. The said order was challenged in an appeal. The Tribunal held that the assessment order was passed on January 27, 1976, and the penalty proceeding was referred to the Inspecting Assistant Commissioner on the same day, but the penalty was levied on April 18, 1979, i.e., after the amendment to section 274(2) of the Act came into force and, therefore, the assessment order was without authority.

4. The Tribunal has followed the judgment of this court in R. Abdul Azeez Vs. Commissioner of Income Tax, Karnataka-I, . There is no dispute that the question referred to this court is also covered by the decision in R. Abdul Azeez''s case.

5. Following the said decision, we, answer the question in the affirmative and against the Department. In the circumstances, we make no order as to costs.

6. Order on oral application. - It is stated that the decision of R. Abdul Azeez Vs. Commissioner of Income Tax, Karnataka-I, is pending consideration before the Supreme Court upon certificate granted by this court. We, therefore, grant a certificate for appeal to the Supreme Court.