

(1985) 07 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 117 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Suraj Bhan

RESPONDENT

Date of Decision : 08-07-1985

Acts Referred:

Income Tax Act, 1922 — Section 28(1)
Income Tax Act, 1961 — Section 256(1), 256(2), 271(1)

Citation : (1986) 159 ITR 709

Hon'ble Judges : S.P. Goyal, J;G.C. Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; D.V. Sehgal, P.S. Rana and B.R. Mahajan, for the Respondent

Judgement

S.P. Goyal, J.—This order will dispose of Income Tax Cases Nos. 117 and 118 of 1977 which involve identical facts and the question of law relating to two assessment years of the same assessee :

The Revenue has moved this court for a mandamus directing the Tribunal to refer the following questions for the opinion of this court.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the penalties of Rs. 25,515 and Rs. 45,680 imposed by the Inspecting Assistant Commissioner of Income Tax u/s 271(1)(c) of the Income Tax Act, 1961, for assessment years 1969-70 and 1970-71 respectively?

2. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal's decision was perverse and not based on the facts of the case ?"

2. The assessee, an individual, is a wine contractor. He filed two returns for the years 1969-70 and 1970-71 declaring a loss of Rs. 8,410 for the former year and income of Rs. 11,451 for the latter. Before the assessment could be completed, a search was carried out at the premises of the assessee on November 28, 1970, and from a set of account books seized, it was revealed that there was a

difference of Rs. 91,000 in the assets on the closing of the year on March 31, 1970. Out of this amount, Rs. 30,000 was credited by the assessee to his capital account and Rs. 30,000 each to the accounts of his two sons. Thereafter, he filed revised returns for the said years showing Rs. 25,675 as additional income in the year 1969-70 and Rs. 44,645 for the latter year. The assessment was thereafter finalised and the net income assessable was assessed at Rs. 25,515 and Rs. 45,680 respectively for the said years. Simultaneously, penalty proceedings u/s 271(1)(c) of the Income Tax Act were initiated and the same were referred to the Inspecting Assistant Commissioner who levied penalties of Rs. 25,515 and Rs. 45,680 for the assessment years 1969-70 and 1970-71, respectively.

3. On appeal, the Income Tax Appellate Tribunal reversed that order, vide judgment dated December 31, 1976. The Revenue filed an application for referring the above-noted two questions before the Tribunal for the opinion of this court but the same was rejected, vide order, annexure "B", which led to the filing of the present petition.

4. On a perusal of the order of the Tribunal, annexure "E", we find that it relied on two decisions, one of this court in BASANT LAL OM PARKASH Vs. COMMISSIONER OF Income Tax, PUNJAB., and the other of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, for accepting the explanation offered by the assessee. The decision in Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, , was overruled by this court in a later Full Bench decision in Vishwakarma Industries Vs. Commissioner of Income Tax, which also clarified that the ratio of Anwar Ali's case which was based on the provisions of Section 28(1)(c) of the Indian Income Tax Act, 1922, is no longer relevant for the construction of Section 271(1)(c) as amended up to date. We are, therefore, of the opinion that question No. 1 does arise from the said order of the Tribunal.

5. Question No. 2, it was conceded by the learned counsel for the Revenue, need not be got referred being superfluous and fully covered by question No. 1. Accordingly, the Tribunal is directed to refer the said question No. 1 together with the statement of the case for the opinion of this court. No costs.