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(1999) 07 MP CK 0056

In the Madhya Pradesh High Court

Case No : Income-tax Reference No. 64 of 1996

Commissioner of Income Tax — APPELLANT

Vs

Suresh Chandra Mittal — RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:
Income Tax Act, 1961 — Section 148, 271, 271(1)

Citation : (2000) 158 CTR 26 : (2000) 241 ITR 124 : (2000) 2 MPLJ 82 : (2002) 123 TAXMAN 1052

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

Bench : Division Bench

Advocate : S.K. Pawanekar, for the Appellant; J.W. Mahajan, for the Respondent

Judgement

B.A. Khan, J.

The Income Tax Appellate Tribunal has made this reference and has filed statement of the case, for opinion of this court on the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 ?"

Shorn of all details, it emerges that the assessee first filed his returns for the assessment years 1983-84, 1984-85, 1985-86 and 1986-87 showing income ranging between Rs. 10,000 and Rs. 12,000. Later action u/s 132 was taken against him which led to reopening of the assessment. A notice u/s 148 was served on him, and pursuant thereto he filed revised returns of income for these assessment years showing higher income. Eventually the assessment orders were passed and the returns submitted regularised u/s 148.

Meanwhile the Assessing Officer took penalty proceedings against the assessee u/s 271 and levied penalty for all the assessment years rejecting the assessee''s contention that he had revised his returns suo motu and had offered additional income to buy peace of mind and to avoid litigation.

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The assessee took appeal against this to the Commissioner of Income Tax (Appeals) but failed, He then carried the matter to the Tribunal and succeeded. The Tribunal held as under ;

"The assessee had no chance of carrying through his explanation and the Assessing Officer too did not record any finding as to the acceptability or otherwise of the explanation of the assessee. Under these circumstances the proviso to Explanation 1 to Section 271 is not attracted. The Revenue did not at all discharge the burden to prove that there was concealment of income by the assessee. It simply rested its conclusion on the act of voluntary surrender by the assessee, which obviously was done in good faith and to buy peace."

The Tribunal also placed reliance on the Supreme Court judgment in Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi, , in support holding as under (page 713) :

"We find that the assessee admitted that these were the incomes of the assessee but that was not an admission that there was deliberate con- cealment. From agreeing to additions, it does not follow that the amount agreed to be added was concealed income. There may be a hundred and one reasons for such admission, i.e., when the assessee realises the true position, it does not dispute certain disallowances but that does not absolve the Revenue from proving the mens rea of a quasi-criminal offence."

We find ourselves in agreement with the view taken by the Tribunal. It is well settled that u/s 271(1)(c), the initial burden lies on the Revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. The burden shifts to the assessee only if he fails to offer any explanation for the undisclosed income or offers an explanation which is found to be false by the assessing authority. However, the proviso to Explanation 1 provides for shifting of this burden again where the explanation offered by the assessee is found to be bona fide.

In the present case, though it is true that the assessee had not surrendered at all and that he had done so on the persistent queries made by the Assessing Officer, but once the revised assessment was regularised by the Revenue and once the assessing authority had failed to take any objection in the matter, the declaration of income made by the assessee in his revised returns and his explanation that he had done so to buy peace with the Department and to come out of vexed litigation could be treated as bona fide in the facts and circumstances of the case. Therefore, the Tribunal was justified in cancelling the penalty levied by the Assessing Officer and affirmed by the Commissioner of Income Tax (Appeals) in the facts and circumstances of the case. This reference is accordingly answered in the affirmative holding that the Tribunal was justified in doing so.

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