
(1982) 11 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Case No. 101 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Suresh Kumar Naresh Kumar

RESPONDENT

Date of Decision : 25-11-1982

Acts Referred:

Income Tax Act, 1922 — Section 10(1), 10(2)
Income Tax Act, 1961 — Section 271(1)

Citation : (1984) 147 ITR 572

Hon'ble Judges : Prem Chand Jain, J; D.S. Tewatia, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; Balwant Singh Gupta and S.K. Mittal, for the Respondent

Judgement

D.S. Tewatia, J.—The Revenue in this petition asserts that the following questions of law arise from the order of the Tribunal dated September 12, 1975, in I.T.A No. 99 of 1974-75 for the assessment year 1970-71 and seeks to require the Tribunal to refer the same to this court for decision :

" (1) Whether, on the facts and in the circumstances of the case, considering that the assessee-firm had itself shown the sales tax liability of Rs. 19,131 for the quarter ending March 31, 1970, only, the Appellate Tribunal was justified in law in accepting the explanation of the assessee-firm, that Rs. 29,735 had been withdrawn by its partner on March 31, 1970, for meeting the sales tax liability of the assessee for the year 1969-70 ?

(2) Whether, on the facts and in the circumstances of the case, there was any legal or admissible material before the Appellate Tribunal to hold that the assessee-firm had discharged the onus placed upon it under the Explanation to Section 271(1)(c) ?

(3) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has misdirected itself in cancelling the penalty levied on the petitioner

firm ?"

2. The question whether the Tribunal should be directed to refer the aforementioned questions for the decision of the High Court shall have to be resolved in the light of the facts which, shorn of the details, can be stated thus:

3. The respondent, M/s. Suresh Kumar Naresh Kumar, withdrew on March 31, 1970, Rs. 29,735 from the cash book for the purposes of meeting the sales tax liability. The said amount was again brought back in the cash book on April 1, 1970, and was credited to the sales tax account relevant to the next assessment year, namely, the assessment year 1971-72. The I.T. authorities noted that the said amount had not been deposited in the treasury. From the above, an inference was drawn that the liability of Rs. 29,735 for payment of sales tax was a fictitious liability and by withdrawing the said amount from the cash book, the respondent-assessee had reduced its taxable income. The said amount of Rs. 29,735 was, therefore, treated as the assessee's income. The said addition of Rs. 29,735 was confirmed by the AAC, because, in the year the amount was withdrawn for meeting sales tax liability, the same was not quantified. It was observed by the AAC that as and when the sales tax liability was quantified the assessee would be entitled to claim a deduction. Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), were initiated against the respondent-assessee, inter alia, regarding the concealment of the amount of Rs. 29,735. Since the Explanation to Section 271(1)(c) was applicable to the case, because the income returned was less than 80% of the income assessed after the AAC's order, the onus was on the assessee to establish that the failure to return the correct income did not arise from any fraud or gross or wilful neglect. The action of the respondent-assessee in withdrawing the said amount from the cash book and not crediting the same to the sales tax account was considered mala fide and fraudulent and, therefore, a penalty of Rs. 40,000 was levied by the IAC. Before the Tribunal the statutory onus in question was sought to be discharged by explaining that a sum of Rs. 29,735 was withdrawn to meet sales tax liability. Copy of the assessment order dated July 30, 1975, of the assessing authority, Hissar, was produced to evidence the existence of sales tax liability on March 31, 1970, and only the quantification thereof was all that remained to be settled. It was also pleaded by the assessee that withdrawing the amount of Rs. 29,735 on March 31, 1970, and not crediting it to the sales tax account did not amount to any mala fide action as the same was credited in the cash book on April 1, 1970, and was duly credited in the next year to the sales tax account. The Tribunal on the strength of the Supreme Court's view in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, held that the assessee had discharged the onus because it did "have a statutory liability to pay sales tax and when it withdrew Rs. 29,735 for the purpose of meeting that liability it could not be said that the assessee was guilty of fraud or gross or wilful neglect, for, the liability to pay the sales tax was an admissible deduction and the fact that the assessee did not debit the liability in its books of account did not debar it from claiming deduction under either

Section 10(1) or Section 10(2)(xv) of the Indian I.T. Act, 1922.

4. The sales tax liability admittedly having existed on March 31, 1970, and the same being treated as an admissible deduction in view of the Supreme Court's decision in *The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta*, even though the assessee did not debit the liability in its books of account, the Appellate Tribunal, in our view, rightly concluded that, "From the totality of the circumstances of this case we are satisfied that the assessee is guilty of neither any concealment of income u/s 271(1)(c) nor deemed concealment under the Explanation to Section 271(1)(c) " and did not misdirect itself in cancelling the penalty levied by the Revenue on the assessee-firm.

5. In this view of the matter, we hold that no case is made out for directing the Tribunal to draw up a case and refer the questions posed in the petition by the Revenue for the decision of this court. Hence, the petition is dismissed but with no order as to costs.

Prem Chand Jain, J.

6. I agree.