

(1996) 04 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 221 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Sureshchandra Gupta

RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

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

Citation : (1997) 227 ITR 613 : (1997) 226 ITR 613

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; Y.I. Mehta, for the Respondent

Judgement

A.R. Tiwari, J.—The applicant (Commissioner of Income Tax, Bhopal), has filed this application u/s 256(2) of the Income Tax Act, 1961 (for short the "Act"), seeking a direction to the Tribunal to state the case and refer the proposed question of law as extracted below, on rejection of the application registered as RA No. 126/Ind of 1992 for the assessment year 1985-86, on December 19, 1992, arising out of the order passed by the Tribunal on May 15, 1992, in ITA No. 934/Ind of 1990, for our consideration and opinion.

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting penalty u/s 271(1)(c) and holding that Explanation 1 to Section 271(1) is not at all attracted ?"

2. The facts lie in a narrow compass.

3. The assessee furnished the return for the assessment year 1985-86, on March 10, 1986, declaring his income as Rs. 13,850. The Income Tax Officer then issued a letter on July 16, 1986, to furnish details of the expenses claimed at Rs. 36,023 on truck. The assessee then furnished a revised return on February 26, 1988, showing the income of Rs. 49,880 and surrendered the expenses claimed earlier. The assessment was completed on January 16, 1989. Penalty proceedings u/s 271(1)(c) of the Act were initiated. The assessee filed objections. After

consideration of the same, the Income Tax Officer levied a penalty of Rs. 15,000. This order was confirmed by the Commissioner of Income Tax (Appeals). The assessee then filed an appeal before the Tribunal. The Tribunal deleted the penalty on placing reliance on Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi, . The applicant filed an application u/s 256(1) of the Act which was rejected. Therefore, the applicant has filed this application proposing the aforesaid question.

4. We have heard Shri D.D. Vyas, learned counsel for the applicant, and Shri Y.I. Mehta, learned counsel for the non-applicant.

5. We notice that the Tribunal deleted the penalty on the undernoted terms by placing reliance on Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi, .

" The following observations of the Supreme Court in Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi, need attention :

"We find that the assessee admitted that these were the incomes of the assessee but that was not an admission that there was deliberate concealment. 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."

In this connection, reference may also be made to Addl. Commissioner of Income Tax Vs. Jeewandas Gyanchand, and Girdharilal Soni Vs. Commissioner of Income Tax, and Commissioner of Income Tax, Poona Vs. Bhimji Bhanjee and Co., . The cases relied upon by the learned Departmental representative are not in point. The penalty is, therefore, deleted."

6. The Tribunal declined to state the case and observed that the facts were examined and the conclusion was reached that there was no concealment of income. Indisputably, the assessee had voluntarily surrendered by way of revised return before any concealment as such could be detected. The Tribunal found that the conclusion was based on appreciation of facts which gave rise to no question of law.

7. We find that the aforesaid approach is correct and the order is sound. The conclusion is one of appreciation of facts. The revised return was submitted voluntarily. No case of conscious concealment is visible.

8. In view of the aforesaid position, the Tribunal committed no error in deleting the penalty.

9. We are thus satisfied with the correctness of the order passed by the Tribunal and conclude that the question does not arise out of the order of the Tribunal.

10. In the result, we dismiss this application but without any order as to costs. Counsel fee is, however, fixed as Rs. 750 for each side, if certified.