(1977) 08 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No. 109 of 1976

Commissioner of Income Tax APPELLANT

Vs

Surinder Singh RESPONDENT

Date of Decision : 22-08-1977

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

Citation : (1977) 08 P&H CK 0030

Hon'ble Judges : S.P. Goyal, J;A.S. Bains, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Bhagirath Dass and S.K. Hirajee, for the Respondent

Judgement

Ajit Singh Bains, J.—This application has been made by the Commissioner of Income Tax, Jullundur, u/s 256(2) of the Income Tax Act, 1961 (hereafter referred to as " the Act "), against the order dated June 7, 1976, of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as " the Tribunal"), declining to state the case to the High Court, for directing the Tribunal to refer the following question of law to this court, which according to him, arises out of the Tribunal''s order dated February 21, 1976 :

" Whether, on the facts and in the circumstances of the case, the Tribunal is correct in cancelling the penalty of Rs. 1,76,000 levied u/s 271(1)(c) of the Income Tax Act, 1961 ? "

2. The facts giving rise to this application are not disputed and are as under:

The Commissioner of Income Tax, Jullundur, made an application under Sub-section (1) of Section 256 of the Act to the Tribunal requesting it to draw up a statement of the case and to refer to the High Court the aforesaid question of law in case of Commissioner of Income Tax v. Surinder Singh, arising out of the Tribunal''s order dated February 27, 1976, passed u/s 254(1) of the Act in I.T.A. No. 237(ASR) of 1975-76 (Assessment year 1971-72). The Tribunal, vide its order dated June 7, 1976, has declined to state the case to the High Court as in its opinion no question of law arose out of its order dated February 27, 1976.

3. The assessee, Surinder Singh, is a British passport holder. On March 17, 1971, his residence situated at 14-B, Model Town, Phagwara, was searched by the officers of the Enforcement Directorate, who recovered a suit case containing currency notes of Rs. 6,04,500 from the assessee''s bedroom. The amount of Rs. 6,04,500 was seized by the Enforcement Directorate under the provisions of the Foreign Exchange Regulation Act, 1947. On receipt of information about the search, the Income Tax Officer initiated assessment proceedings for the assessment year 1971-72, and served upon the assessee a notice under Sub-section (2) of Section 139 of the Act on April 2, 1971. The assessee filed the return on June 26, 1971, showing an income of Rs. 3,850. He declared in Part IV of the return that the sum of Rs. 6,04,500 seized by the Enforcement Directorate did not belong to him and that it was not his income at all. During the course of the assessment proceedings the assessee pleaded that he had collected the amount of Rs. 6,04,500 for the purchase of 2/3rds shares (10,000 in number) of M/s. Kartar Bus Service Ltd. Jullundur, at a price three times the face value of the shares. After scrutiny of the agreement dated February 12, 1971, alleged to have been entered into by the assessee with the said company, the Income Tax Officer came to a finding that the same was a fabricated one; He also noticed that there were cuttings and overwriting in the stamp paper register of the stamp vendor. Opinion of the handwriting expert was also obtained which further confirmed the Income Tax Officer''s suspicion that the entries in the said register had not been made in the ordinary course and that the alleged agreement shown to have been written on February 12, 1971, was not actually written on the said date but on a later date. The assessee''s contentions were not accepted by the Income Tax Officer and accordingly it was held that the assessee had failed to establish that the sum of Rs. 6,04,500 was raised by him as loan from various persons for purchasing the shares of the said company. The sum of Rs. 6,04,500 was treated as the assessee''s income from undisclosed sources u/s 69A of the Income Tax Act. The Income Tax Officer also initiated penalty proceedings u/s 271(1)(c) and referred the case to the Inspecting Assistant Commissioner under Sub-section (2) of Section 274 of the Income Tax Act. Against the assessment order of the Income Tax Officer an appeal was filed before the Appellate Assistant Commissioner, who accepted the assessee''s explanation with regard to an amount of Rs. 5,31,000 but did not accept the assessee''s explanation with regard to three cash credits amounting to Rs. 88,000. The assessee''s second appeal before the Income Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner failed.

4. After the decision of the Tribunal, the Inspecting Assistant Commissioner took up the penalty proceedings u/s 271(1)(c) of the Act, who, on the basis of the material and evidence brought on the record, came to the conclusion that in the case of all the three creditors, the evidence had been cooked up with a view to lend credibility to the assessee''s story of loans having been taken from the

various parties and that the amounts of the three loans in question represented the assessee''s concealed income. He, therefore, imposed a penalty of Rs. 1,76,000 at the maximum rate of 200 per cent. of the concealed income : vide his order dated May 30, 1975.

5. On appeal, the Tribunal, vide its order dated February 27, 1976, cancelled the penalty of Rs. 1,76,000 imposed on the assessee by the Inspecting Assistant Commissioner. It is in these circumstances that the present application has been made to this court to direct the Tribunal to refer the aforesaid question of law to this court.

6. Mr. D. N. Awasthy, the learned counsel for the revenue, has contended before us that the learned Tribunal has erred in holding that no question of law arose out of its order dated February 27, 1976. In support of his contention he has relied on the Explanation to Section 271(1)(c) of the Act and also on a Division Bench decision of this court in COMMISSIONER OF Income Tax, PATIALA-I Vs. BHARAT TUBEWELL STORES., . On the other hand, Mr. Bhagirath Dass, the learned counsel for the assessee, contended that no question of law arises out of the Tribunal''s order dated February 27, 1976, and, therefore, a direction to refer the aforesaid question of law to this court cannot be given to the Tribunal. For this contention he placed reliance on a Division Bench decision of this court in Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, . The facts of that case are clearly distinguishable from the facts of the present case as that case was a case of reference whereas the present case is a case of mandamus. The facts of COMMISSIONER OF Income Tax, PATIALA-I Vs. BHARAT TUBEWELL STORES., are fully applicable to those of the present case. In that case, applying the Explanation to Section 271(1)(c) of the Act, the Inspecting Assistant Commissioner imposed a penalty on the assessee for concealment of income. On appeal, the Tribunal set aside the penalty holding that the burden lies on the revenue to establish the charge of concealment and that the absence of an explanation or the falsity of an explanation cannot be construed as establishment of concealment. The Tribunal declined to state a case to the High Court. On an application u/s 256(2) of the Act made to the High Court it was held by their Lordships that the matter rested on the determination as to on whom the onus rested to prove that the concealment was deliberate or not and the true effect of the Explanation to Section 271(1)(c) and, therefore, a question of law arose which should be referred to the High Court. Explanation to Section 271(1)(c) is in the following terms :

" Where the total income returned by any person is less than eighty per cent. of the total income (hereinafter in this Explanation referred to as ''the correct income '') as assessed u/s 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have conceal ed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) of this sub-section."

7. A bare perusal of the Explanation shows that where the total income returned by any person is less than eighty per cent. of the total income as assessed u/s 143 or Section 144 or Section 147 of the Act, such person shall, unless he proves that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of Clause (c) of Sub-section (1) of Section 271 of the Act. From this it is quite clear that if the total income returned by any person is less than eighty per cent. of the total income assessed, then the onus lies on the assessee to prove that the concealment was not deliberate, and not on the revenue. In the present case, admittely, the total income returned by the assessee is much less than eighty per cent. of the total income assessed.

8. It is a matter of common knowledge that concealment of income in our country has created imbalance in our economy and this is one of the most important reasons for the inflationary trend and high prices. The activities of such assessees as the present one have paralysed our economy. The Income Tax law has to be construed strictly. The reading of the Explanation to Section 271(1)(c) does not admit of any other interpretation. The onus lies heavily on the assessee to prove that concealment was not out of fraud or gross or wilful neglect. In this situation, in our view; the question of law as framed by the revenue does arise out of the Tribunal''s order dated February 27, 1976, in I.T.A. No. 237(ASR) of 1975-76, and we direct the Tribunal to refer the same along with the statement of the case for the opinion of this court. The costs will abide the ultimate result.

