(1990) 10 AHC CK 0042

In the Allahabad High Court

Case No : Income-tax Reference No. 749 of 1978

Commissioner of Income Tax APPELLANT

Vs

University Printers RESPONDENT

Date of Decision : 23-10-1990

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

Citation : (1991) 188 ITR 206

Hon'ble Judges : B.P. Jeevan Reddy, C.J;V.N. Mehrotra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—The Income Tax Appellate Tribunal has referred the following question u/s 256(2) of the Income Tax Act, 1961.

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

2. The relevant facts are the following :

The assessee is a registered firm. For the assessment year 1969-70, it filed a return disclosing an income of Rs. 14,860. The Income Tax Officer, however, assessed its total income at Rs. 47,981. He did so on the ground that certain cash credits were not properly explained by the assessee. Penalty proceedings were also initiated u/s 271(1)(c). Since the minimum penalty imposable exceeded the sum of Rs. 1,000, the matter was referred to the Inspecting Assistant Commissioner u/s 274(2). The Inspecting Assistant Commissioner imposed a penalty of Rs. 16,000 which the assessee questioned by way of an appeal before the Tribunal. The Tribunal was of the opinion that merely because the explanation offered by the assessee was rejected, it furnished no ground for levying penalty until and unless it was found that the amount in question constituted the concealed income of the assessee. Since there was no material except the fact that the explanation offered by the assessee was rejected, the Tribunal held that the imposition of penalty is not warranted. The reasoning of the Tribunal is contained in the following extract :

"We have considered the facts of the case very carefully and we are of the opinion that the assessee has not been found guilty of furnishing inaccurate particulars. This fact is clear both from the order of the Income Tax Officer as well as that of the Inspecting Assistant Commissioner. The assessee obtained certain loans and paid interest thereon. But it was nowhere admitted by him that this was his income. The Income Tax Officer added all these receipts and interest thereon as income from undisclosed sources. He did not pin-point that the amounts in question were the concealed income of the assessee. The assessee has been found guilty of only giving a false explanation."

3. In our opinion, the said approach is consistent with the decision of the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . Learned standing counsel for the Revenue argued that the ratio of the decision in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , cannot be understood in absolute terms and if it is so done, it would amount to asking the Department to prove the impossible. We do not know. The decision of the Supreme Court is binding upon us. Indeed, the facts in the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, were more prejudicial to the assessee and yet it was held that, in the absence of any material other than the fact that the explanation offered by the assessee was rejected, penalty u/s 28(1)(c) of the 1922 Act (corresponding to Section 271(1)(c) of the present Act) cannot be imposed.

4. Accordingly, the question referred is answered in the affirmative, i.e., in favour of the assessee and against the Department.