(1999) 07 KAR CK 0028

In the Karnataka High Court

Case No : Civil Petition No''s. 897-899 of 1997

Commissioner of Income Tax — APPELLANT

Vs

V. Narashima Prasad — RESPONDENT

Date of Decision : 30-07-1999

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

Citation : (2001) 250 ITR 852 : (2002) 120 TAXMAN 536

Hon'ble Judges : R. Gururajan, J;Ashok Bhan, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; K.R. Prasad, for the Respondent

Judgement

Ashok Bhan, J.—The Commissioner of Income Tax, Karnataka, has filed this petition u/s 256(2) of the Income Tax Act, 1961, seeking a mandamus directing the Income Tax Appellate Tribunal, Bangalore (for short "the Tribunal"), to refer the following two questions of law along with the statement of case to this court for its opinion :

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

(2) Whether, the Income Tax Appellate Tribunal is justified on the facts, in the circumstances of the case and in law in coming to the conclusion that the assessee had not concealed the particulars of its income ?"

2. These petitions relate to the assessment years 1986-87, 1987-88 and 1988-89, respectively. They were all disposed of by a common order of the Tribunal. Reference petitions were also disposed of by the Tribunal by a common order. We also propose to dispose of them by a common order.

3. The assessee had filed the original returns for the respective assessment years disclosing an income of Rs. 34,150, Rs. 62,190 and Rs. 97,370. After the filing of

the return a survey was conducted. After the survey the assessee filed revised returns for the respective years disclosing income of Rs. 17,30,350, Rs. 3,28,680 and Rs, 11,26,600, respectively. The Assessing Officer framed the assessment on the revised returns and simultaneously issued notice for imposition of penalty on the ground that the assessee was guilty of concealment of income. The plea was that the revised returns '' were filed after the survey was conducted and, therefore, there was a concealment of income on the part of the assessee. In pursuance of the notice issued and after taking into consideration the returns filed the assessing authority levied penalty of Rs. 8,40,000, Rs. 6,29,170 and Rs. 5,41,484 for the respective assessment years 1986-87, 1987-88 and 1988-89.

4. The assessee being aggrieved filed an appeal before the Commissioner of Income Tax (Appeals) which was dismissed. The order of the Assessing Officer levying penalty was confirmed. The assessee being aggrieved filed a further appeal before the Tribunal which was allowed. It was held that there was no concealment on the part of the assessee. The assessment had been framed as per the revised returns filed by the assessee. The order levying penalty was quashed.

5. The Revenue filed a petition u/s 256(1) requesting the Tribunal to refer the two questions of law said to be arising from the order of the Tribunal which has been dismissed holding that the finding regarding concealment of income was a finding of fact and no referable question of law arises.

6. We have examined the order of the Tribunal carefully and we are in agreement with the same. In our opinion, the finding recorded by the Tribunal is a finding of fact and no referable question of law arises. Dismissed.