**(1984) 03 MP CK 0022**

**In the Madhya Pradesh High Court**

**Case No :** M. C. C. No. 34 of 1980

Mohammad Shabbir APPELLANT

Vs

Commissioner Income Tax, Madhya Pradesh RESPONDENT

**Date of Decision :** 31-03-1984

**Acts Referred:**

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

**Citation :** (1984) JLJ 236

**Hon'ble Judges :** G.L. Oza, Acting C.J.;C.P. Sen, J

**Bench :** Division Bench

**Advocate :** B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

**Final Decision :** Dismissed

## Judgement

C.P. Sen, J.—This is an application u/s 256(2) of the income tax Act, 1961 by the assessee for a direction to the Income Tax Appellate Tribunal to state the case and refer the following questions of law:

(1) Whether on the facts and in the circumstances of the case, there is justification in law to hold that the applicant had concealed the particulars of his income or furnished inaccurate particulars of such income for the purpose of section 271 (1) (c) of the Income Tax Act ?

(2) Whether there is material on record to hold that there was fraud or gross or wilful neglect on the part of the applicant so as to bring him within the purview of the Explanation to section 271 (1) (c)?

(3) Whether by the mere non-acceptance of the explanation given by the applicant, it could be held that there was wilful neglect or fraud on the part of the applicant ?

(4) Whether on the material on record, it could be held that the penal provisions were attracted ?

(5) Whether the imposition of penalty was legal ?

 

The learned counsel for the assessee conceded that all the questions are related and, in fact, the only question that arises is whether on the fact and in the circumstances of the case, there is justification in law to hold that the assessee had concealed the particulars of his income or furnished inaccurate particulars of such income for the purpose of section 271 (1) (c) of the Act,

2. The assessment year involved is 1971-72 with the accounting year ended on Diwali, 1970. This was the first year of the assessee''s business. On 1-10-1970 the assessee introduced cash of Rs. 20,000/-& on 4-10-1970 cash of Rs. 2,070/- in the books of account. The Income Tax Officer called upon the assessee to prove the nature and source of these credits. The assessee explained that this amount represented his past savings from agricultural income. The explanation was rejected by the Income Tax Officer and a sum of Rs. 22, 070/- was added as income of the assessee from undisclosed source. The assessee appealed against this order before the Appellate Assistant Commissioner and finally before the Appellate Tribunal. The Appellate Tribunal after giving a maximum possible allowance for savings from agricultural income held that the assessee was unable to explain the credit to the extent of Rs. 10, 000/-. Addition of 10, 000/- was finally maintained. There the Income Tax Officer initiated penalty proceedings u/s 271 (1) (c) of the Act. The assessee had returned income of Rs. 4, 760/, while the income finally assessed was Rs. 16, 160/- after giving effect to the relief allowed by the Appellate Tribunal. As, according to the Income Tax Officer the income returned was less than 80 per cent of the income assessed, provisions of Explanation to Section 271 (1) were applicable. The Income Tax Officer further observed that failure of the assessee to return the correct income did arise from fraud or gross or wilful neglect and the assessee would be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income. The Appellate Assistant Commissioner confirmed this finding and the quantum of penalty imposed by the Income Tax Officer.

3. On a further appeal the Appellate Tribunal maintained the order. It was observed that the assessee had returned income which was less than 80 per cent of the income ultimately assessed and, therefore, Explanation to section 271 (1) (c) of the Act was applicable and the Income Tax Officer specifically invoked the Explanation for levying penalty on the assessee. The assessee had peaded in the assessment proceedings that the credits were covered by his agricultural income. This explanation was not fully accepted and finally the Appellate Tribunal held that at the most, looking to the extent and nature of the land held by the assessee, cash credit of Rs. 12, 000/- could be treated as explained. When the penalty proceedings were initiated, the assessee has a charge of furnishing fresh material or evidence to prove availability of funds. No attempt was made by him and no fresh material was produced. The presumption raised by Explanation to section 271 (1)(c) of the Act was not displaced by the assessee by showing that there was no fraud or gross or wilful neglect on his part. In these circumstances the authorities below had no option but to hold that under the Explanation the assessee would be deemed to have concealed the particulars of his income or

 

furnished inaccurate particulars of such income for the purposes of clause (c) of this sub-section. The assessee then filed an application u/s 256 (1) of the Act before the Tribunal which was rejected by holding that the Tribunal is based on facts and no question of law ari es(sic) therefrom.

4. After having heard the parties, we are of the opinion that the findings of the Appellate Tribunal are based on facts and no question of law arises. We are fortified in our view by a decision of this Court in C. I. T. v. Pradeep Shantaram Padgaonkar 134 I. T. R 785 , wherein it was held that the findings of the Tribunal that there was nothing to show that the assessee was guilty of fraud or gross or wilful neglect in returning the income and so set aside the order imposing penalty on the basis of findings of fact recorded by it on the materials produced on record and, therefore, no question of law arose for reference. Similar is the view taken by other High Courts that no question of law arose out of the Tribunal''s order because whether the presumption raised by the Explanation to section 271 (1) (c) had been rebutted or was not essentially a question of fact. See Addl. Commissioner of Income Tax Vs. Thahrayamal Balchand, , Commissioner of Income Tax Vs. Goswami Smt. Chandralata Bahuji, , Commissioner of Income Tax Delhi-V Vs. R. Dalmia (Decd.), , Commissioner of Income Tax Vs. Basanta Kumar Agarwalla and Another, and C. I. T. v. Dewan Singh Gurbachan Singh ITR 434. However, the learned counsel for the assessee placed reliance on decision of the Supreme Court in Addl. Commissioner of Income Tax, Gujarat Vs. Chandravilas Hotel, but that case has no application here because in that case the questions were whether in view of the provisions of section 271 (1) (c) of the Income Tax Act, 1961 and the Explanation thereto, the Appellate Tribunal was right in cancelling the penalty imposed on the assessee and whether the finding of the Tribunal that the assessee was not guilty of any fraud or gross or wilful neglect in returning income at figure less than 80 per cent of the income assessed was arrived at without considering the entire material on record. Reliance was also placed on a decision of this Court in Commissioner of Income Tax Vs. Ratanlal Mishrilal, , wherein it was held that in the instant case the assessee had discharged the burden cast on him by the Explanation to section 271 (1) (c). He had explained that the amount was a loan from his father and unless the I. T. authorities had something more than a mere estimate of the father''s ability to save the amount in question, the guilt of concealment could not be held to have been established and no penalty could be levied in the circumstances of the case. It was also observed that the proof necessary under this Explanation is not one as required in a criminal case. If the assessee has tendered proof of such explanation and the Department was not convinced with it, merely on the possibility of its being unlikely, the conclusion that concealment was established would not be warranted.

5. Accordingly we dismissed the application by saying that no question of law arises. The parties to bear their own costs.

 