(1988) 07 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 298 of 1982

Narendra Kumar Rajendra Kumar Jain APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 01-07-1988

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 271(1)(c), 5

Citation : (1988) 174 ITR 479

Hon'ble Judges : G.G. Sohani, Acting C.J.;K.M. Agarwal, J

Bench : Division Bench

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

Judgement

G.G. Sohani, Actg., C.J.—As directed by this Court, the income tax Appellate Tribunal, Jabalpur Bench, Jabalpur, has referred the following question of law to this court for its opinion:''

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was guilty of concealing the particulars of his income and was liable to pay penalty under the provisions of section 271(1)(c) of the income tax Act, 1961 ?"

The relevant facts giving rise to this reference briefly are as follows: while framing the assessment of the assessee for the assessment year 1971-72, the income tax Officer rejected the claim of the assessee for deduction in respect of sales tax amounting to Rs. 19,263. Thereafter, the income tax Officer initiated penalty proceedings against the assessee and imposed penalty u/s 271(1)(c) of the Act on the ground that the assessee was guilty of concealment inasmuch as it had claimed the aforesaid amount as deduction. Aggrieved by that order, the assessee preferred an appeal before the Appellate Assistant Commissioner. It was contended before the Appellate Assistant Commissioner on behalf of the assessee that though the deduction in question should have been claimed in the assessment year 1970-71, due to inadvertence, it was not so claimed and was claimed for the first time in the assessment year 1971-72. It was also contended that there was no conscious concealment of income. The Appellate Assistant Commissioner held that as the deduction in question had not been claimed previously and as the assessee had claimed it for the first time in the assessment year 1971-72, it could not be held that the assessee was liable to pay penalty for concealment of income. In this view of the matter, the Appellate Assistant Commissioner allowed the appeal. Aggrieved by that order, the Revenue preferred an appeal before the Tribunal. The Tribunal allowed the appeal and held that the assessee was liable to pay penalty u/s 271(1)(c) of the Act. Aggrieved by that order, the assessee sought a reference but the application submitted by the assessee in that behalf was rejected. Hence, an application to this court u/s 256(2) of the Act was filed which was allowed and this court directed the Tribunal to refer the aforesaid question of law to this court. That is how the aforesaid question of law has come up before us for consideration.

2. It is now well-settled that before an assessee can be held liable to pay penalty u/s 271(1)(c) of the Act, it must be found that the assessee had consciously concealed the particulars of income. In the instant case, the assessee had claimed a certain deduction and unless it was held that the assessee had deliberately claimed false deduction, the assessee could not be held liable to pay penalty u/s 271(1)(c) of the Act. Now, the finding of the Appellate Assistant Commissioner was that as the expenditure incurred had not been claimed previously and was claimed for the first time in the assessment year in question, it could not be held that the assessee was guilty of concealment. The Tribunal has not recorded any finding that the assessee had deliberately claimed false deduction and was guilty of concealment. All that the Tribunal found was as follows:

"Be that as it may, once an expenditure has been considered on due basis, the same cannot be considered on cash basis as per the provisions of section 5 of the income tax Act, 1961. All said and done, we hold that the claim made by the assessee during the year under consideration is excessive to the tune of Rs. 10,870 and to that extent the assessee is liable for levy of penalty u/s 271(1)(c) of the Act, as during the year under consideration neither any payment was made by the assessee nor any demand notice was received."

3. The Tribunal has not thus found that the expenditure claimed by the assessee was not incurred at all, or that it was claimed in earlier years and that the assessee deliberately made a false claim for deduction in the assessment year in question. The Tribunal merely held that the claim for the expenditure in question could not be allowed in view of the mercantile system of accounting which the assessee was following. In our opinion, in the absence of any finding that the assessee had deliberately made a false claim for deduction, the Tribunal was not justified in holding that the assessee was liable to pay penalty u/s 271(1)(c) of the Act. For all these reasons, our answer to the question referred to this court is in the negative and in favour of the assessee. In the circumstances of the case,

parties shall bear their own costs of this reference.

