(2004) 09 AHC CK 0253

In the Allahabad High Court

Case No : Income-tax Reference No. 23 of 1987

Piarey Lal and Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:
Income Tax Act, 1961 — Section 256, 256(1), 68

Citation : (2005) 276 ITR 540

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Gaurav Mahajan, for the Appellant; Shambhu Chopra, for the Respondent

Judgement

1. Heard Sri Gaurav Mahajan, learned counsel for the assessee, and Sri Shambhu Chopra, learned standing counsel for the Revenue.

2. The following two questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), have been referred for the opinion to this court :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in rejecting the claim of the assessee that the credits were genuine borrowings and not his untaxed funds and restoring the addition of Rs. 63,000 on account of credits appearing in the name of S/Shri Satish Chand, Ram Lal, Vijay Chand and Dharam ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in rejecting the material on record in arriving at a finding regarding the aforesaid cash credits ?"

3. The facts giving rise to the present reference are as follows :

4. The applicant is a firm. It derived income from arhat of vegetables. For the assessment year 1981-82 it had filed a return of income declaring the taxable

income of Rs. 58,840. During the course of assessment proceeding the Income Tax Officer issued notice regarding cash credit entries amounting to Rs. 63,000. He called upon the applicant to explain these entries. In respect to three entries the applicant stated that they were trade deposits. However, the applicant was not in a position to give addresses and their confirmatory letters have also not been filed. In respect of the other two deposits the source of deposits could not be explained and in this view of the matter the Income Tax Officer added the entire amount as income from the undisclosed source by invoking the provision of Section 68 of the Act. In the appeal filed before the Commissioner of Income Tax (Appeals) the Commissioner of Income Tax (Appeals) deleted the addition of Rs. 63,000 on the ground that the identity and creditworthiness of the depositors have been accepted. The Revenue feeling aggrieved preferred an appeal before the Appellate Tribunal. The Tribunal reversed the order of the Commissioner of Income Tax by holding that in respect of three deposits standing in the name of Satish Chand, Ram Lal and Vijay Chand, the addresses of these people was not known to the applicant and no confirmatory letter has been filed. The plea of trade deposit has been disbelieved for want of evidence. In respect of deposit standing in the name of Hukum Chand the Tribunal has found that he had been living in Haridwar since 1984. In respect of the deposit made by Dharam the Tribunal has found that he had no source at all as he was doing some business here and there. The findings recorded by the Tribunal are based on appreciation of material on record and are findings of fact and do not suffer from any legal infirmity. They are binding on this court in a reference u/s 256 of the Act.

5. In view of the findings recorded by the Tribunal we are of the opinion that the Tribunal was justified in rejecting the claim of the applicant and holding that the deposits amounting to Rs. 63,000 remained unexplained.

6. In view of the foregoing discussions, we answer the questions referred to us, in the affirmative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.