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**(1997) 11 AHC CK 0133**

**In the Allahabad High Court**

**Case No :** Income Tax Reference No. 69 of 1982 18 November 1997

RAM SEWAK RAM CHANDRA APPELLANT

Vs

COMMISSIONER OF INCOME TAX RESPONDENT

**Date of Decision :** 18-11-1997

**Acts Referred:**
Income Tax Act, 1961 — Section 256, 271

**Citation :** (1998) 151 CTR 294 : (1998) 98 TAXMAN 416

**Hon'ble Judges :** R.K. Gulati, J;M.C. Agarwal, J;M. C. Agarwal, J

**Bench :** Full Bench

**Final Decision :** Disposed Of

## Judgement

At the instance of the assessee, the Tribunal, Allahabad Bench, u/s 256(1) of the Income Tax Act, 1961 (hereafter referred to as `the Act'') has referred the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the penalty of Rs. 15,000 u/s 271(1)(c)?"

2. In paragraph-6 of the Statement of the Case submitted by the Tribunal, it is stated that in pursuance of direction of this court u/s 256(2) of the Act on the quantum side in the case of the assessee, it has submitted a separate statement of the case to this Court and, therefore, this reference is also being made, which involves the question about the imposition of penalty for concealment of income which is the subject-matter of other reference on the quantum side.

3. At the outset, the learned counsel for the assessee stated at the bar that the reference on the quantum side has since been decided and the order of the Tribunal has been sustained.

4. We have heard the learned counsels for the parties. The question for consideration is whether the Tribunal was justified in confirming the penalty of Rs. 15,000 for concealment. There were certain deposits in the account books of

the assessee aggregating of Rs. 25,000 in the name of Smt. Lakshmi Devi, wife of Shri Ayodhya Prasad, one of the partners of the assessee-firm. On the quantum side, Smt. Lakshmi Devi was examined and wherein she stated that Rs. 10,000 was given to her by her grand father at the time of her marriage and the remaining amount of Rs. 15,000 came out of the income derived by her for the assessment years 1972-73 to 1974-75 from money lending business. The deposit to the extent of Rs. 10,000 was accepted which was received as gift by the lady, but in respect of balance of Rs. 15000, it was added to the income of the assessee, as income from undisclosed sources, inasmuch as no evidence whatsoever was brought on record that the lady had carried on any pawning or money-lending business.

5. In the appeal against the penalty order, the Tribunal observed that the findings recorded on the quantum side may not be conclusive for the purposes of penalty and, thus proceeded to decide the question afresh on the material that was placed before it. It was found that it was a case covered by Explanation attached to section 271(1)(c), as it stood at the relevant time, inasmuch as the difference between the total income returned and the income assessed was more than 20 per cent. The Tribunal has recorded a clear finding that the Explanation to section 271(1)(c) was clearly attracted on the facts of the case and there was no evidence to show the absence of any fraud or gross or willful negligence on the part of assessee. The assessee had failed in raising any probabilities in its favour nor any circumstance had been pointed out which could create doubt, the benefit of which could be given to the assessee. The Tribunal held:

"....We have no hesitation in coming to the factual findings that the assessee failed to discharged the onus which lay on it under the Explanation to section 271(1)(c) and, therefore, since the unexplained cash credit of Rs. 15,000 appearing in the account of Smt. Laxmi Devi has to be taken to represent the concealed income of the firm, the imposition of penalty was justified."

6. The findings recorded by the Tribunal are pure findings of fact. Nothing was brought to our notice which may pursuade us to take a different view than the one taken by the Tribunal.

7. For what has been stated above, we answer the question in the affirmative in favour of the revenue and against the assessee.

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