

(1990) 11 AHC CK 0050

In the Allahabad High Court

Case No : Income Tax Reference No. 151 of 1978

Samunder Bhan Sadh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 22-11-1990

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1991) 98 CTR 32 : (1991) 188 ITR 638

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;V.N. Mehrotra, J

Bench : Division Bench

Advocate : Vikram Gulati, for the Appellant; M. Katju and B. Dayal, for the Respondent

Judgement

B.P. Jeevan Reddy, C.J.—u/s 256(1) of the Act, the Tribunal has referred the following two questions :

"1. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee has failed to discharge its onus within the meaning of the Explanation to Section 271(1)(c) of the Act and was liable to penalty for concealment of income ?

2. Whether, on the facts and circumstances of the case, the assessee was liable for penalty for default in the original return, he having filed a revised return ?"

2. The assessee, an individual, carries on business in printing power loom cloth of cheaper varieties and sarees. For the assessment year 1971-72, the concerned year, he filed the return on May 25, 1971, disclosing an income of Rs. 21,400. He estimated his sales turnover at Rs. 4 lakhs whereon he disclosed a gross profit of 9%. He claimed a sum of Rs. 14,600 by way of expenses. Notices under Sections 142(1) and 143(2) were issued to him. Thereupon, he filed a revised return. On this occasion, the assessee disclosed the income from business at Rs. 33,000 and from property at Rs. 100. He estimated sales turnover at Rs. 11 and assessed the net profit at 3%. His case was that he did

not maintain any accounts.

3. The Income Tax Officer, however, did not accept the estimate. He estimated the sales turnover at Rs. 12,40,000 and determined the net income at Rs. 80,600. The assessee's appeals to the Appellate Assistant Commissioner and the Appellate Tribunal proved unsuccessful.

4. The Income Tax Officer initiated proceedings for penalty u/s 271(1)(c) inasmuch as the returned income was less than 80% of the assessed income and the Explanation to Section 271(1)(c), which was then in force, was attracted. It meant that the burden of proving that concealment was not wilful shifted to the assessee.

5. The assessee submitted that he did not maintain accounts and that the difference between the two returns was on account of the fact that his constituents had not intimated him of certain transactions. This explanation did not find favour with the concerned authority and a penalty of Rs. 59,200 was levied. Since the penalty was levied by the Inspecting Assistant Commissioner, an appeal was filed to the Tribunal which was dismissed. Thereupon, the assessee applied for referring as many as seven questions but the Tribunal referred only the aforesaid two questions observing that the other questions were implicit in the questions referred.

6. A perusal of the order of the Tribunal shows that the Tribunal was not prepared to accept the petitioner's plea that he did not maintain accounts. It observed, and, in our opinion justifiably, that a businessman, having a turnover of Rs. 11 lakhs, would not but have maintained accounts. There was a vast disparity between the sales turnover disclosed in the first return and the one disclosed in the revised return. It, accordingly, found that the assessee has failed to discharge the burden which lay upon him by virtue of the aforesaid Explanation. That the approach adopted by the Tribunal is in accordance with law in borne out by a recent decision of the Supreme Court in Commissioner of Income Tax Vs. Mussadilal Ram Bharose, , which explained and interpreted the Explanation and its effect upon the question of burden.

7. Mr. Vikram Gulati, learned counsel for the assessee, submitted that since the assessable income was enhanced on the basis of estimate of income, it is not a proper case where the penalty ought to have been levied. We must, however, say that the Income Tax Officer has no alternative except to make an estimate. Indeed, the assessee himself had returned his income on the basis of estimate. The Income Tax Officer could not have done otherwise. The explanation offered by the assessee has been rejected by both the Inspecting Assistant Commissioner and the Tribunal. We are of the opinion that the approach of the Tribunal is in accordance with law and is factual in nature. The Tribunal had held that the assessee had failed to discharge the burden that lay upon him by virtue of the Explanation appended to Section 271(1)(c) of the Act arid we cannot say that its finding is not justified.

8. Learned counsel relied on a decision of the Bombay High Court reported in Commissioner of Income Tax, Poona Vs. B.D. Ramchandra, as well as a decision of this court reported in Kesar Sugar Works Ltd. v. State of U. P. [1975] UPTC 538. We do not, however, feel it necessary to refer to the facts of those cases which turned upon the facts therein.

9. For the reasons mentioned above, we answer both the questions referred to us in the affirmative, i.e., in favour of the Revenue and against the assessee.