(1997) 07 P&H CK 0202

In the Punjab And Haryana At Chandigarh

Case No : IT Case No. 55 of 1991

Sardara Singh — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 02-07-1997

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

Citation : (1998) 98 TAXMAN 275

Hon'ble Judges : N.K. Agrawal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : R.P. Sawhney and S.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—This petition has been filed u/s 256(2) of the income tax Act, 1961 (''the Act'') for a mandamus directing the Tribunal, Chandigarh Bench, Chandigarh, to refer the following four questions of law said to be arising out of the order of the Tribunal to this Court for its opinion along with the statement of the case : (a) Whether, on the facts and in the circumstances of the case, the learned Tribunal is justified in reversing the order of the Commissioner of income tax (Appeals) cancelling the penalty of Rs. 65,570 imposed by ITO u/s 271(1)(c) and restoring the order of ITO imposing penalty ?

(b) Whether, on the facts and in the circumstances of the case, the conclusion arrived at by the Tribunal is based on any material on record to hold the assessee/applicant liable for imposition of penalty u/s 271(1)(c) ?

(c) Whether, on the facts and in the circumstances of the case, any penalty for concealment of particulars of income u/s 271(1)(c) is exigible ?

(d) Whether on the facts and in the circumstances of the case, if the answer to the above question is affirmative, the Tribunal is justified in sustaining the penalty at 150 per cent of the tax sought to be evaded instead of minimum penalty of 100 per cent ?

For the assessment year 1977-78, the assessee filed a return showing his income at Rs. 11,600. The ITO, however, assessed a total income of Rs. 1,09,300 after making certain additions/disallowances to the income of the assessee. It was noticed by the ITO that business transactions were not truly reflected in the books of account; further finding recorded was that stocks were not properly recorded in the books of account and expenses were inflated by wrong totallings. When the assessee was cornered by the ITO, he ultimately surrendered the additions/ disallowances made by the ITO. No appeal was filed against the additions made by the ITO.

2. The ITO initiated penalty proceedings u/s 271(1)(c) of the Act. A show-cause notice was issued to the assessee. In response to the show-cause notice, the assessee appeared and filed a written statement. The ITO imposed a penalty of Rs. 65,570. The assessee aggrieved with the order of the ITO preferred an appeal before the Commissioner (Appeals) who cancelled the penalty order. The department carried a further appeal to the Tribunal. The Tribunal reversed the finding recorded by the Commissioner (Appeals) and restored the order passed by the ITO. It was held by the Tribunal as under : "We have carefully considered the rival submissions. We have gone through the order of the income tax Officer and also the order of the Commissioner of income tax (Appeals). The order of the ITO is very lengthy where he has discussed the case of the department threadbare, highlighting the manipulations in the books. By not reflecting all the transactions in the books, wrong totallings, over totallings in expenses account and surreptitiously introducing cash in the garb of cash credit without ledgerising the same, the assessee tries to hoodwink the revenue but accepted all these additions when confronted with facts and figures by the income tax Officer. The income tax Officer has also found erasures, over-writings, interpolations, manipulations, in the account books of the assessee. The assessee debited purchase for tongston metal to the trading account but did not show the same either in sales or in the closing stocks. The case of the assessee was that the goods were in transit and, therefore, the same were not shown in the closing stock. We would like to add here that the assessee was careful enough to debit the cost of goods in the trading account and also hypothecate with the bank but not to show the value thereof in the closing stock; this is a deliberate act on the part of the assessee, particularly when the books of account were found by the ITO to be interpolated by commission, over-writings, wrong totallings on a number of places. The inflation in expenses, in our opinion, was also a calculated act and not by mere inadvertence or through typographical errors. If it was not so, then mistakes in totalling could be towards losses side also but the assessee has singularly failed to bring even a single instance of this nature on records. Similarly ,we are also in agree with the learned departmental representative that the assessee introduced his own cash of Rs. 7,000 surreptitiously in the account of the creditor without ledgerising the same to avoid detection by the income tax Officer. In view of the above discussions and the authorities relied on by the learned departmental representative which we have quoted above, we are of the

opinion that the Commissioner of income tax (Appeals) was not justified in cancelling the penalty. Accordingly, we are unable to sustain his order. His order is reversed and that of the income tax Officer restored."

Findings recorded by the Tribunal are findings of fact and, therefore, no referable question of law arises out of the order of the Tribunal. This petition is, therefore, dismissed.

