
(1985) 07 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No's. 462 of 1981 and 164 of 1982

Vimalchand Bhimsen

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-07-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 271(1)

Citation : (1986) 54 CTR 405 : (1986) 159 ITR 941

Hon'ble Judges : K.K. Adhikari, J; J.S. Verma, J

Bench : Division Bench

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

Judgement

J.S. Verma, J.—Both these cases are disposed of by this common judgment. The assessee is a partnership firm carrying on business in the firm name "M/s. Vimalchand Bhimsen, Jabalpur". Its business is in purchase and sale of iron goods. For the assessment year 1961-62, ending on March 31, 1961, the Income Tax Officer estimated the sales at Rs. 2,50,000 and applied a gross profit rate of 9%. On this basis, the gross income was computed at Rs. 22,500, out of which a sum of Rs. 7,500 was allowed as expenditure. However, the Income Tax Officer also found that the assessee had introduced certain cash credits amounting to Rs. 2,62,688 in the form of telegraphic transfers, for which the assessee could not give any satisfactory explanation. The Income Tax Officer found that the assessee could not relate these T.Ts. to the sale proceeds of the goods and, therefore, after considering the earlier years remittances and the material present on record, he estimated that the maximum amount of Rs. 1,80,000 alone could be accepted as remittances made out of the sales. Consequently, the Income Tax Officer added the remaining amount of Rs. 82,688 to the assessee's total income as income from undisclosed sources. The assessee's first appeal to the Appellate Assistant Commissioner partly succeeded and the addition made by the Income Tax Officer of Rs. 82, 688 was reduced to Rs. 50,000. The assessee's further appeal to the Tribunal was also partly allowed and this figure was further

reduced to Rs. 25,000. In this manner, the addition of Rs. 82,688 made by the Income Tax Officer was ultimately reduced to the amount of Rs. 25,000.

2. As a result of the addition made by the Income Tax Officer, penalty proceedings were also commenced against the assessee u/s 271(1)(c) of the Income Tax Act by the Income Tax Officer and the matter was referred to the Inspecting Assistant Commissioner who levied a penalty of Rs. 25,000. The assessee's appeal to the Tribunal has failed and the penalty imposed by the Inspecting Assistant Commissioner has been maintained.

3. Aggrieved by the aforesaid orders, the assessee applied for a reference which was refused by the Tribunal but on a direction of this court u/s 256(2) of the Income Tax Act, 1961, the Tribunal has referred for the decision of this court the following questions of law, namely :

Misc. Civil Case No. 164 of 1982;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in sustaining the addition of Rs. 25,000 in paragraphs 8 and 9 of its order dated August 13, 1976 ?"

Misc. Civil Case No. 462 of 1981 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in sustaining the penalty u/s 271(1)(c) ?"

4. As regards the question referred for the decision in Misc. Civil Case No. 164 of 1982, the learned counsel for the assessee contended that the sole basis for sustaining the addition of Rs. 25,000 indicated at the end of para. 9 of the Tribunal's order (annexure-C) dated August 13, 1976, was an addition made for the subsequent assessment years, but the same having been subsequently deleted, there is no basis for making this addition. We are unable to accept this contention. Reading para. 9 of the Tribunal's order as a whole, it appears that this was the reason given by the Tribunal for reducing the addition from the figure of Rs. 50,000 to Rs. 25,000, or, in other words, for making a reduction of the amount in the assessee's favour and not for any other purpose. Even assuming that the addition made for the subsequent assessment years has been deleted, as claimed by the assessee, for which there is no material present on record, this by itself does not provide a foundation for the argument advanced by the learned counsel for the assessee. The order of the Income Tax Officer gives cogent reasons for making the addition. To say the least, the reason given by the Income Tax Officer is plausible and independent of the addition made for any subsequent assessment year. That is the basis for making the addition. Thereafter, the Appellate Assistant Commissioner and then the Tribunal have simply reduced the amount without saying anything inconsistent with the reason given by the Income Tax Officer for making the addition. It cannot, therefore, be said that the reason for sustaining the addition of Rs. 25,000 was merely an addition also for the subsequent assessment years, as claimed by the learned

counsel for the assessee. This question must, therefore, be answered in favour of the Department and against the assessee.

5. Regarding the question referred for the decision in Misc. Civil Case No. 462 of 1981, it cannot be disputed that the Explanation to Section 271(1)(c) of the Income Tax Act is attracted to the present case, on account of the fact that the income returned by the assessee is less than 80% of the income assessed. This being so, the burden was on the assessee to rebut the presumption arising by virtue of the Explanation. The Tribunal has clearly held that no plausible explanation was given by the assessee in spite of sufficient opportunity given to the assessee for this purpose, with the result that the presumption arising by virtue of the Explanation has been unrebutted. This conclusion of the Tribunal, apart from being one of fact, is also borne out from the reasons given in support thereof. There is thus no basis to hold in favour of the assessee even in respect of the penalty matter.

6. Consequently, both the questions are answered in favour of the Department and against the assessee as under :

Misc. Civil Case No. 164 of 1982 :

Answer : On the facts and in the circumstances of the case, the Tribunal was right in law in sustaining the addition of Rs. 25,000 in its order dated August 13, 1976.

Misc. Civil Case No. 462 of 1981 :

Answer : On the facts and in the circumstances of the case, the Tribunal was right in law in sustaining the penalty u/s 271(1)(c) of the Income Tax Act, 1961.

7. There will be no order as to costs.