(1992) 02 GUJ CK 0022

In the Gujarat High Court

Case No : Income-tax Reference No. 228 of 1978

Yamuna Restaurant APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1993) 110 CTR 195 : (1993) 201 ITR 99

Hon'ble Judges : R.C. Mankad, Acting C.J.;R.K. Abichandani, J

Bench : Division Bench

Judgement

R.C. Mankad, Actg. C. J.

1. Learned counsel for the parties stated that they have no objection if this reference was heard by this Bench.

2. The assessee is a partnership firm running a restaurant and the assessment year under reference is 1970-71. In the course of the Income Tax

assessment for the assessment year under reference, the Income Tax Officer, on scrutiny of the cash book, found that the assessee had tampered

with the figures. The assessee had disclosed total sales at Rs. 2,67,748. The Income Tax Officer, however, after taking into consideration the

inflated figures, found that the sales were to the extent of Rs. 2,72,728. The Income Tax Officer added Rs. 35,980 to the income of the assessee

representing suppressed sales. The Appellate Assistant Commissioner confirmed this addition in appeal. In further appeal to the Income Tax

Appellate Tribunal ("" the Tribunal"" for short), it was held that the assessee had deliberately understated the sales for which there was no acceptable

explanation. The Tribunal, therefore, confirmed the addition.

3. The Income Tax Officer initiated penalty proceedings for levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 ("" the Act"" for short), and

referred the penalty proceedings to the Inspecting Assistant Commissioner. The Inspecting Assistant Commissioner levied penalty of Rs. 55,000 in

respect of the income concealed. The assessee preferred an appeal against the levy of penalty before the Tribunal. The Tribunal was of the view

that penalty was leviable only in respect of the understatement of sales. In this view of the matter, it reduced the penalty to Rs. 37,000, as against

Rs. 55,000 imposed by the Inspecting Assistant Commissioner. It is in the background of the above facts that the following question has been

referred to us for our opinion :

Whether there is any evidence to sustain the finding that there was concealment of income so as to justify the imposition of penalty?

4. It is difficult to say that there is no evidence to sustain the finding that there was concealment of income as urged on behalf of the assessee. The

evidence clearly establishes that the assessee had tampered with the books of account and this was done only with a view to suppressing the sales.

There is evidence to prove that there was understatement of income to the extent of Rs. 35,980 on account of suppression of sales. Admittedly,

the assessee had not disclosed this income of Rs. 35,980. In our opinion, there was clear case of concealment of income. The Tribunal was,

therefore, right in levying penalty, which it did.

5. In the result, we answer the question, which has been referred to us for our opinion, in the affirmative and against the assessee. Reference

answered, accordingly, with no order as to costs.

