

Cit Vs. Om Prakash

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Court : Allahabad

Decided On : Feb-07-2005

Reported in : [2006]153TAXMAN11(All)

Appeal No. : IT Reference No. 146 of 1991 7 February, 2005

Appellant : Cit

Respondent : Om Prakash

Advocate for Pet/Ap. : A.N. Mahajan, *for the Applicant* J.C. Bhardwaj, *for the Respondent*

Judgement :

R.K. Agrawal, J.

The Income Tax Appellate Tribunal, Delhi, has referred the following question of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for opinion to this Court:

*Whether, on the facts and in the circumstances of this case, the Tribunal was, in law, justified in holding that no penalty under section 271(1)(c) of the Income Tax Act, 1961 was leviable in the present case ?'

2. The reference relates to the assessment years 1975-76, 1976-77 in respect of proceedings arising out of penalty imposed under section 271(1)(c) of the Act.

3. Briefly stated the facts giving rise to the present reference are as follows:

In respect of the assessment year 1975-76, the assessing authority had made an addition of Rs. 2,500 as income from iron business and of Rs. 7,500 as income from pawning business. The addition of Rs. 2,500 on account of income from iron business was ultimately deleted by the Tribunal while the addition on account of pawning business had been sustained.

4. For the assessment year 1976-77, the assessing officer had made an addition of Rs. 5,500 on account of unexplained household expenses and of Rs. 35,000 on account of investment in business. The addition of Rs. 5,500 has been upheld by the Tribunal while the addition on account of investment in pawning business was upheld at Rs. 14,030 only. On the basis of these additions, penalty amounting to Rs. 12,500 and Rs. 6,350 for the assessment years 1975-76 and 1976-77 respectively have been imposed by the assessing officer under section 271(1)(c) of the Act.

5. Feeling aggrieved the respondents preferred separate appeals before the Appellate Assistant Commissioner who had deleted the penalty which order has been confirmed by the Tribunal.

6. We have heard Sri A.N. Mahajan, learned standing counsel for the revenue and Sri J.C. Bhardwaj who has appeared on behalf of the respondent-assessee.

7. We find that the Tribunal while upholding the deletion of penalty in question have recorded categorical findings of fact that the explanation offered by the respondent-assessee in respect of the additions made in the assessment order and upheld in appeal has not been proved to be false. While upholding the order, the Tribunal has relied upon the order dated 16-2-1988 passed for the assessment year 1977-78 in respect of the penalty proceedings.

8. We have gone through the order dated 16-2-1988 and find that the Tribunal has given the following grounds for upholding that the addition sustained has been bona fidely entertained:

'The rival submissions have been heard and duly considered. The consolidated order dated 10-6-1983 of the Appellate Tribunal in ITA Nos. 3220/Del/81, 2566/Del/82 & 3974/Del/1981 for the assessment years 1975-76, 1976-77 and 1977-78 has been perused, so also the order dated 16-2-1988, of the Tribunal in Appeal No. 3187/Del/1987 for the assessment year, 1977-78. So far as the addition on account of iron business is concerned, it was completely deleted by the Tribunal in the assessment appeal. So far as the two additions are concerned, the pattern of facts on the basis of which the additions were made was the same for all the three years. The Tribunal held in para 10 of its order dated 16-2-1988 for the assessment year 1977-78 that the assessee's explanation that the expenditure was out of disclosed draws had not been proved to be false nor it looked bona fide and therefore penalty was not leviable. So far as the addition by way of investment in pawning business is concerned, it was similarly observed by the Tribunal in the same order in para 12 and that the revenue had failed to collect any further evidence to pin down the assessee that the slip seized at the time of search contained transactions relating to the assessee. Therefore, the penalty with reference to that addition was also cancelled by the Tribunal. Following with respect the said decision which is fully applicable for the assessment years in question, the pattern of facts was the same. There is no warrant or justification for any interference with the order of the Appellate Assistant Commissioner.'

9. On the finding recorded we are of the considered opinion that the penalty has rightly been deleted. We answer the question referred to us in the affirmative, i.e., in favour of assessee and against the revenue. There shall be no order as to costs.