Cit Vs. Chirag Ingots (P) Ltd.

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Court : Madhya Pradesh

Decided On : Oct-04-2004

Reported in : [2005]142TAXMAN427(MP)

Appeal No. : IT Reference No. 68 of 1999 4 October 2004

Appellant : Cit

Respondent : Chirag Ingots (P) Ltd.

Advocate for Pet/Ap. : R.L. Jain, *for the Revenue.*

Judgement :
ORDER

Sapre, J.

This is an application made by revenue (CIT) under section 256(2) of the Income Tax Act consequent upon the rejection of their application made under section 256(1) of the Act by the Tribunal vide order, dated 16-11-1998, passed in R.A. No. 148/Ind./98, arising out of the order, dated 25-6-1998, passed by Tribunal in ITA No. 545/Ind./94 in respect of assessment year No. 1991-92. The applicant i.e. Revenue had sought following three questions of law for being referred to this court by the Tribunal under section 256(1) of the Act. However, the Tribunal declined to refer the questions holding that the questions pro~ posed are essentially questions of fact and hence, they cannot be said to arise out of the order passed by the Tribunal in appeal.

2. Following were the questions proposed to Tribunal for being referred and the same are again being proposed in this application made under section 256(2) ibid

'1. Whether on the facts and in the circumstances of the case Tribunal was justified in holding that even after filing of revised return by the 'A' offering a sum of Rs. 7,50,000 as income from other sources on account of unproved cash credits, the revenue was required to bring material on record during penalty proceedings to show that the cash credits were not genuine and that Supreme Court judgment in the case of G.C. Agrawal v. CIT Assam, Nagaland etc. (: [1990]186ITR571(SC)) and Madras High Court in the case of H.V. Venugopal v. CIT : [1985]153ITR376(Mad) do not render any assistance to the revenue

2. Whether on the facts and in the circumstances of the case Tribunal was justified in holding that no penalty under section 271(1)(c) can be levied in the case of the income assessed on negative figure even though Explanation 4 to section 271(1) provided for levy of penalty in such cases

3. Whether on the facts and in the circumstances of the case Tribunal was justified in holding that the decision of M.P. High Court in the case of CIT v. Saora Sugar Mills is applicable to the facts of the case even though Explanation 4 to section 271(1) has been brought on the statute with effect from 1-4-1976?'

3. Heard Shri RL Jain, learned counsel for the applicant.

4. Having heard learned counsel for the parties and having perused record of the case, we too are of the view that the questions proposed are essentially questions of fact and can not be termed as questions of law for being referred to this court for answer. In other words, none of the questions proposed can be said to have arisen out of the order passed by the Tribunal in appeal nor can they be said to be questions of law. The Tribunal was, therefore, justified in rejecting the application made under section 256(1) ibid., by the revenue.

5. The dispute arises out of assessment year 1991-92. It relates to imposition of penalty on the assessee under section 271(1)(c) of the Act. It was set aside by CIT

(A) as also by Tribunal holding that in the absence of any factual finding that the loans taken by the assessee were bogus, no penalty can be imposed. In other words, the appellate authorities i.e. CIT (A) and Tribunal were of the view that in order to impose penalty, there must be a categorical finding of fact that transaction of loan relied on by assessee was a bogus transaction. It is only then the question of imposition of penalty may arise. We concur with the view so taken as in our opinion; it does not call for any interference. In fact, the view so taken is based on questions of fact and can not be faulted with.

6. In view of aforesaid discussion, we are not able to find any case much less question of law arising out of the Tribunal's order. The application is thus, liable to be dismissed. It is accordingly, dismissed.