Cit Vs. Medipac (P) Ltd.

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Court : Delhi

Decided On : Apr-09-2001

Reported in : [2001]119TAXMAN130(Delhi)

Appeal No. : IT Reference No. 334 of 1982 9 April 2001

Appellant : Cit

Respondent : Medipac (P) Ltd.

Advocate for Pet/Ap. : Sanjeev Khanna and;Ms. Prem Lata Bansal;for the Revenue

Judgement :

Arijit Pasayat, C.J.

At the instance of the revenue, following questions have been referred by the Tribunal, Delhi Bench B, under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion of this court :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the provisions of section 271(1)(c) and section 273 of the Income Tax Act, 1961 are pari materia and the burden of proving that the estimate of advance tax as filed by the assessed was false to its knowledge lay on the department ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that revenue had to produce some material to show that assessed had in this year earned income of Rs. 1 lakh although the assessed itself had disclosed it under the V.D. Scheme in respect of this year ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the Commissioner (Appeals) and cancelling the penalty levied by the Inspecting Assistant Commissioner (Asstt.) ?'

We have heard the learned counsel for the revenue. There is no appearance on behalf of the assessed in spite of notice.

2. We had occasion to deal with the question of penalty under section 271(1)(c) of the Act in Income Tax Reference No. 314 of 1982 and following the decision of this court in CIT v. La-Medico (1992) 198 ITR 3271, it was held that the Tribunal was not justified in cancelling the penalty under section 271(1)(c) and so far as section 273(a) of the Act is concerned, the logic is equally applicable. The parameters are not entirely different. thereforee, the Tribunal was not justified in cancelling the penalty under section 273(a). Accordingly, we answer the first question, so far as section 273(a) is concerned, in the negative, in favor of the revenue and against the assessed. In view of the answer to first question, it is unnecessary to answer the other two questions referred.

3. The reference stands disposed of.