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Court : Delhi

Decided On : Jul-20-2001

Reported in : [2001]119TAXMAN369(Delhi)

Appeal No. : Income Tax Reference No. 299 of 1979 20 July 2001

Appellant : Electrical Agencies Corpn.

Respondent : Cit

Advocate for Pet/Ap. : R.C. Pandey and; Ms. Prem Lata Bansal,;for the Revenue

Judgement :

Pursuant to the directions given by this court in ITC 23 of 1983, the following questions have been referred for opinion of this court under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) :

- ' 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that penalty was exigible in this case ?
2. When the learned Inspecting Assistant Commissioner had imposed penalty under the substantive provisions of section 271(1)(c) and had not at all referred to Explanationn to section 271(1) while levying the penalty, was the Tribunal competent to uphold the levy of penalty under Explanationn to section 271 (1) ?

3. If the answer to the above is in the affirmative, could it be said that the assessed-firm was guilty of any fraud or gross, or willful neglect in filing its return of income ?

4. Was there any evidence with the Tribunal for upholding that the assessed-firm could not be said to have rebutted the presumption which arose against it in the light of Explanationn to 271 (1) of the Act?'

The dispute relates to assessment year 1966-67.

2. Factual position is as follows :

The assessed, a registered firm, filed its return showing an income of Rs. 1,02,767. The assessing officer determined the total income at Rs. 1,57,514. It included addition of Rs. 49,985 on the ground that commission claimed to have been paid to sub-agents was not substantiated. The Appellate Assistant Commissioner in appeal reduced the total income by Rs. 6,000 and out of this deduction of Rs. 5,000 related to the commission paid to one person Ravinder Malik. The Tribunal by its order in income-tax (Appeal) 4392 of 1969-70 confirmed the disallowance while sustaining the addition. The Tribunal observed, inter alia, as under :

'Having regard to the above facts and to the reasons given by the Income Tax Officer and the Appellate Assistant Commissioner, we are unable to accept the submission put forward on behalf of the assessed that the payments of commission were genuine and the departmental authorities have erred in disallowing them.'

Proceedings were initiated for concealment of income under section 27 1 (1)(c) of the Act and the matter was referred to the Inspecting Assistant Commissioner and a penalty of Rs. 22,800 was levied by the Inspecting Assistant Commissioner with reference to disallowance of commission upheld by the Appellate Assistant Commissioner. The matter was carried in appeal before the Tribunal by the assessed. Having noted all the factual aspects, the Tribunal came to hold that the commission claimed to have been paid to J. Mohan was not justified and the claim

was untenable. With regard to other sub-agents, the Tribunal took the view that in law the assessed could not have been said to have proved that the claim for expenditure did not arise from any fraud or willful negligence on its part. Considering the extenuating circumstances, the Tribunal directed that the penalty should be restricted to minimum leviable. A prayer for reference was made which was rejected. However, as noted above, this court on being moved under section 256(2) directed for a reference.

3. We have heard the counsel for the revenue. There is no appearance on behalf of the assessed. We find that the Tribunal has taken note of the factual aspects and has noted that the claim was clearly untenable, not genuine and, therefore, the assessed could not be said to have rebutted the presumption which arose against it in the light of the Explanation to section 271 (1)(c). The conclusions are essentially factual giving rise to no question of law. That being the position, the first question is answered in the affirmative in favor of the revenue and against the assessed.

In that view of the matter, there is no necessity of answering the other questions referred.

Reference is disposed of accordingly.