

Jaln Brothers Vs. Cit

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Court : Delhi

Decided On : Mar-13-2001

Reported in : (2001)168CTR(Del)297

Appeal No. : IT Ref. No. 148 of 1982 13th March 2001 A. Y. 1971-72

Appellant : Jaln Brothers

Respondent : Cit

Advocate for Pet/Ap. : None, for the assessee; R.D. Jolly and; Ms. Prem Lata Bansal, for the Revenue

Judgement :

Arijit Pasayat, C.J. :

Pursuant to the direction given by this court in an application under section 256(2) of the Income Tax Act, 1961 (herein after referred to as 'the Act'), Appellate Tribunal Delhi Bench-D (herein after to as Tribunal) has referred the following question for opinion of this court .

'Whether, on the facts and in the circumstances of the case, the Tribunal acted on material in coming to the conclusion that penalty was imposable on the assessed for the assessment year 1971-72 ?'

As the question itself indicates, dispute relates to assessment year 1971-72.

2. Factual position, as noted in the statement of case, is as follows :

assessed, a partnership firm, consisted of four partners with 25 per cent shares each. Its business was of selling steel pipes and tubes, etc. with its head office at Delhi and branch at Calcutta. For the assessment year in question previous year ended on Diwali, 1970. assessed had filed its return on 20-7-1971, declaring an income of Rs. 4,64,890. Assessment was completed on a total income of Rs. 7,50,682. assessed preferred appeal to the Appellate Assistant Commissioner of Income-tax (herein after referred to as AAC). Said authority granted partial relief to the assessed and total income was reduced to Rs. 6,05,877. Before completion of assessment, Income Tax Officer initiated penalty proceedings under section 271(1)(c) of the Act and referred the matter to the Inspecting Assistant Commissioner (IAC in short) under section 274(2) of the Act, as the amount in respect of which income had been concealed or inaccurate particulars of such income had been furnished exceeded Rs. 25,000. Inspecting Assistant Commissioner, after issuing show-cause notice to the assessed and after considering assessed's objections in the show-cause reply and written submissions filed from time to time held that assessed had concealed its income and/or furnished inaccurate particulars of income to the extent of claim of interest amounting to Rs. 61,181. Accordingly it was held that penalty under section 271(1)(c) was leviable. Inspecting Assistant Commissioner took note of the fact that the main addition made in the assessment order was disallowance of Rs. 61,181 representing interest on alleged loans from agriculturists, which the assessed had also accepted. Making a reference to the assessment order made for the assessment years 1956-57, it was held that assessed was guilty of concealment of income. The acceptability of alleged loans from agriculturists was dealt with in the assessment orders for several years i.e., 1956-57 onwards. therefore, minimum penalty of Rs. 61,181 was levied. Matter was carried in appeal before the Tribunal. Four appeals were dealt with by the Tribunal together. Three of them relate to the assessments made for the assessment years 1967-68 to 1969-70 while fourth one related to the case at hand. Tribunal noticed that after it was brought to assessed's notice that so-called loans were not genuine, assessed surrendered, after being cornered. Not only that, assessed had introduced the amounts in question in its books accepting it to be belonging to the

firm or its partners. That being the position, there being no scope for claiming interest on the so-called loans and rightly, therefore, it has been held that there was concealment of income or furnishing of inaccurate particulars of its income. Accordingly, levy of penalty was upheld. Prayer was made for reference under section 256(1) of the Act which was rejected. However, on being moved, as noted above, direction was given by this court for referring the question as set out above for opinion of this court.

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

Learned counsel for revenue submitted that after analysing the factual position in detail, Tribunal has concluded that penalty was clearly leviable. That being the position no question of law arises out of the order of the Tribunal.

4. A few facts need to be noted to deal with the question referred. As has been indicated by the Tribunal, loans to the tune of over Rs. 1 crore were claimed to have been taken from different persons. A device of introducing them in the form of deposits from Hundiwalas and agriculturists was adopted and some confirmatory letters were obtained. The so-called creditors did not come forward to claim those amounts and ultimately assessed introduced the amounts in its books as belonging to it or its partners. Tribunal found it interesting that people who had advanced such large deposits remained silent, did not come forward to claim the amounts and ultimately allowed the assessed to become owner of the amounts. A petition for settlement was filed by the assessed after proceedings for the assessment year 1957-58 were initiated for reassessment. A sum of Rs. 1,82,500 towards fictitious Hundi loans was added in the income of the assessed. Investigations for the subsequent years were also going on and assessments already completed had been reopened. Tribunal in fact noticed that return for the assessment year in question was filed on 20-7-1971 while surrender had already been made in respect of assessment year 1959-60 to 1966-67. In view of the aforesaid factual position, Tribunal concluded that there was concealment of income and/or furnishing of inaccurate particulars of income so far as claim of interest is concerned. As the factual position goes to show, the amounts had been

accepted to be belonging to the assessed and/or its partners and that is why these amounts were later on introduced in the books as belonging to the assessed or its partners. In the aforesaid factual backdrop, conclusions of the Tribunal are essentially factual giving rise to no question of law. We decline to answer the question referred.

The reference is accordingly returned unanswered.

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