Cit Vs. Shishpal

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SooperKanoon Citation : sooperkanoon.com/772367

Court : Rajasthan

Decided On : Sep-06-2001

Reported in : (2002)172CTR(Raj)410

Appeal No. : IT Ref. No. 17 of 1992 6 September 2001

Appellant : Cit

Respondent : Shishpal

Advocate for Pet/Ap. : Sundeep Bhandawat, *for the Revenue* Arun Bhansali, *for the Assessee*

Judgement :

N.N. Mathur, J.

This is a reference made at the instance of the revenue under section 256(1) of the Income Tax Act, 1961, to answer the following question of law namely :

'Whether on the facts and in the circumstances of the case, the learned members of the Tribunal were legally justified in confirming the order passed by Commissioner (Appeals) that when the additions on the basis of which the penalty imposed has been deleted, the penalty does not survive and is cancelled.'

2. The necessary facts are that the assessee was apprehended by customs authorities at Barmer on 16-5-1979, and was found possessing precious stones of

the value of Rs. 64,503. Since the assessee could not prove the acquisition/source of investment in the precious stones, the Income Tax Officer brought to tax the unexplained investment by resorting to section 69 of the Income Tax Act, 1961, and directed for issuance of penalty notice including notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961. He had levied a penalty of Rs. 32,256 by order dated 19-6-1985. The Commissioner (Appeals) cancelled the entire penalty on the basis that while the addition in quantum appeal itself was deleted, there was no case for penalty under section 271(1)(c) of the Income Tax Act.

3. The department preferred an appeal before the Tribunal against the said order. The Tribunal upheld the order of the Commissioner (Appeals).

4. It is agreed by both the learned counsel for the parties that question sought to be referred in this reference application has been answered by the Division Bench of this court in IT Ref. No. 35/1980, CIT v. Sukhdeo Charity Estate (1987) 63 CTR (Raj) 78. We are in complete agreement with the decision of the Division Bench in CIT v. Sukhdeo Charity Estate (supra). Once the very foundation for imposition of penalty has become non-existent the addition was not justified.

5. In view of the aforesaid, it is now unnecessary to answer the above question of law. The reference application accordingly stands disposed of. No order as to costs.