

(2000) 08 P&H CK 0243

High Court Of Punjab And Haryana At Chandigarh**Case No:** Income-tax Appeal No. 152 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Prem Dass

RESPONDENT

Date of Decision: Aug. 2, 2000**Acts Referred:**

- Income Tax Act, 1961 - Section 148, 260A, 271(1)

Citation: (2001) 248 ITR 237**Hon'ble Judges:** Nirmal Singh, J; G.S. Singhvi, J**Bench:** Division Bench**Advocate:** R.P. Sawhney, assisted by Rajesh Bindal, for the Appellant;

Judgement

G.S. Singhvi J.

This is an appeal by the Revenue for directing the Income Tax Appellate Tribunal, Delhi Bench, (SMC) Delhi (hereinafter described as "the Tribunal"), for reference of the following questions of law :

"(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in cancelling the entire penalty even when the assessee was not able to substantiate his explanation and he also failed to prove that all the facts material to the computation of his total income were disclosed by him ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in cancelling the entire penalty simply because the additions were made on estimate basis, in total disregard of the fact that such estimate was necessitated on account of the assessee's failure to maintain and produce primary record of his business ?

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in cancelling the entire penalty even when

Explanation 1(B) to Section 271(1)(c) was clearly applicable on the facts of this case which is integral part of the section as held by the Punjab and Haryana High Court in the case of [Capital Cinema Vs. Commissioner of Income Tax](#), "

2. The assessee is engaged in the transport business. In response to the notice issued u/s 148 of the Income Tax Act, 1961 (for short, "the Act"), he filed a return of income on July 3, 1986, declaring the income of Rs. 35,270. The assessing authority did not accept the return and assessed his income at Rs. 2,55,630. The Commissioner of Income Tax (Appeals) assessed the income at Rs. 1,85,565. His order was upheld by the Tribunal. Thereafter, the assessing authority initiated penalty proceedings u/s 271(1)(c) of the Act and levied penalty of Rs. 1,04,405. The Commissioner of Income Tax (Appeals) upheld the order of penalty, but the Tribunal set aside the order of the assessing authority and the appellate order mainly on the ground that the difference between the returned and the assessed income was due to difference of opinion about the estimated rates of income and expenditure.

3. We have heard Shri R.P. Sawhney, who fairly stated that the question similar to question No. (iii) (noted hereinabove) was considered and answered by this court against the Revenue in I. T. C. No. 14 of 1998 -- [Commissioner of Income Tax Vs. Prem Das](#), (decided on May 11, 1999), but argued that the other points would require consideration by the court.

4. We have carefully perused the record and are of the opinion that the present case is fully covered by the order dated May 11, 1999 [Commissioner of Income Tax Vs. Prem Das](#), passed in I. T. C. No. 14 of 1998 and there is no valid ground to take a different view.

5. The submission of Shri Sawhney that other points raised in this appeal require consideration has no merit because all the points sought to be raised by the appellant are interrelated and in view of the decision of the main issue against the Revenue, the other points do not need further elucidation.

6. Hence, the appeal is dismissed. The detailed reasons recorded in the order dated May 11, 1999 (see [Commissioner of Income Tax Vs. Prem Das](#), passed in I. T. C. No. 14 of 1998 shall be read as part of this order.