

(1974) 05 AHC CK 0007

Allahabad High Court

Case No: Income-tax Reference No. 650 of 1972

Commissioner of Income Tax

APPELLANT

Vs

Nawab and Brothers

RESPONDENT

Date of Decision: May 22, 1974

Acts Referred:

- Income Tax Act, 1961 - Section 271(1)

Citation: (1977) 107 ITR 681

Hon'ble Judges: Satish Chandra, J; H.N. Seth, J

Bench: Division Bench

Advocate: Deokinandan, for the Appellant; S.B.L. Srivastava, for the Respondent

Final Decision: Allowed

Judgement

Satish Chandra, J.

The assessee returned an income of Rs. 17,648 for the assessment year 1964-65 and an income of Rs. 25,663 for the assessment year 1965-66. The Income Tax Officer rejected the account books of the assessee on the ground that it was not maintaining the daily stock books. He applied a gross profit rate of 15 per cent. and assessed an income of Rs. 53,425. As the income returned by the assessee was less than 80 per cent, of the income assessed, the Income Tax Officer referred the matter to the Inspecting Assistant Commissioner for taking action for imposing penalty.

2. The Inspecting Assistant Commissioner held that the assessee was guilty of concealing the particulars of his income or furnishing inaccurate particulars thereof within the meaning of Clause (c) of Sub-section (1) of Section 271 of the Income Tax Act, 1961. Ultimately, he proposed a penalty of Rs. 7,500 and Rs. 8,000, respectively.

3. Aggrieved, the assessee went up in appeal to the Tribunal. The Tribunal held that, no doubt, in view of the Explanation to Section 271(1)(c), there was a presumption that if the returned income was less than 80 per cent, of the assessed income, the

assessee had concealed the particulars of his income and that he has committed fraud or gross or wilful neglect in not returning the correct income. The burden of dislodging this presumption was on the assessee. It was open to the assessee to prove that the concealment or furnishing of inaccurate particulars was not due to fraud or gross or wilful neglect on his part. The Tribunal further observed that when evidence has been led the question of onus loses importance and the Tribunal has to see whether the materials on record lead to one or the other conclusion. The Tribunal pointed out that except for the defect that the assessee was not maintaining a day-to-day stock book, there was no evidence to suggest that the assessee understated its sales or inflated its purchases or expenses. Under the circumstances, it could not be held that the assessee was guilty of either fraud or gross or wilful neglect in returning its income. The Income Tax Officer had applied a flat rate to determine the assessable income. Under the circumstances, the assessee could not be held guilty of gross or wilful neglect within the meaning of the Explanation. On this view the levy of penalty was cancelled.

4. At the instance of the Commissioner of Income Tax, the Tribunal has referred the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in cancelling the penalty levied u/s 271(1)(c)/274 of the Income Tax Act, 1961 ?"

5. The Explanation to Section 271(1)(c) raises a presumption that the assessee had concealed his income or furnished inaccurate particulars, if the returned income is less than 80 per cent. of the assessed income. The Explanation requires the assessee to establish that the concealment or furnishing of inaccurate particulars was not because of any fraud or wilful neglect on his part.

6. In the present case, the assessee pointed out, the account books were rejected because of the absence of daily stock register. The assessee has not been guilty of inflating the expenses or of making unnecessary deductions. It has been pointed out on behalf of the assessee that the correct income was determined by merely applying a flat rate on the returned turnover. In view of these facts it could not be said that the assessee was guilty of either fraud or of wilful neglect in the matter. In our opinion, the assessee discharged the burden which lay upon him by establishing the facts mentioned above from which it is clear that it was not a case of either fraud or of commission of any gross or wilful neglect on the part of the assessee. The only neglect of which the assessee could be held guilty is that he was not maintaining day to day stock register. But that was not relevant to the question whether the assessee had furnished inaccurate particulars or concealed his income. We, therefore, answer the question referred to us in the affirmative, in favour of the assessee and against the department. The assessee would be entitled to costs which are assessed at Rs. 200. The fee of learned counsel for the department is also assessed at the same figure.