

Commissioner of Income Tax Vs Janki Saran Kailash Chand

Court: Allahabad High Court

Date of Decision: Nov. 13, 1990

Acts Referred: Income Tax Act, 1961 " Section 256, 271(1)

Citation: (1991) 188 ITR 808 : (1991) 54 TAXMAN 324

Hon'ble Judges: B.P. Jeevan Reddy, C.J; V.N. Mehrotra, J

Bench: Division Bench

Final Decision: Allowed

Judgement

B. P. Jeevan Reddy, C.J.

u/s 256(2) of the Income Tax Act, 1961, the Tribunal has referred the following question :

Whether, on the facts and in the circumstances of the case, there was evidence on record justifying the Tribunal's finding that the assessee has

discharged the onus under the Explanation to Section 271(1)(c) of the Income Tax Act, 1961 ?

2. The assessee is a registered firm carrying on business as forest contractors. The assessment year concerned is 1969-70. In its trading account,

the assessee disclosed sales of Rs. 12.77 lakhs with a gross profit of 10.62%. The Income Tax Officer was of the opinion that the percentage of

profit was too low. He also found that the books of account maintained by the assessee were defective. He estimated the assessee's sales at Rs.

13 lakhs and gross profit at 18% and, on that basis, made additions to the income disclosed by the assessee. On appeal, the Appellate Assistant

Commissioner reduced the percentage of profit to 16% while confirming the estimate of sales. On further appeal, the Income Tax Appellate

Tribunal reduced the percentage of gross profit to 15%.

3. Penalty proceedings were initiated u/s 271(1)(c) of the Act. They were referred to the Inspecting Assistant Commissioner u/s 274(2) of the Act.

He levied a penalty of Rs. 81,000. On appeal, however, the Tribunal allowed the appeal holding that the assessee has discharged the burden

which lay upon him to rebut the presumption arising from the fact that the returned income was less than 80% of the assessed income. We have

perused the order of the Tribunal. The said finding cannot be said to be based on no evidence, though it is true that the reasoning of the Tribunal

cannot be said to be very happy. Since the finding of the Tribunal is essentially one of fact, we cannot interfere with it unless we find that it is based

on no evidence or is perverse.

4. Accordingly, the question referred is answered in the affirmative, i.e., in favour of the assessee and against the department. No costs.