

(1990) 11 AHC CK 0047

Allahabad High Court

Case No: Income-tax Reference No. 1039 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Janki Saran Kailash Chand

RESPONDENT

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.