

(1975) 09 AHC CK 0025

Allahabad High Court

Case No: Income-tax Reference No. 964 of 1972

Additional Commissioner of
Income Tax

APPELLANT

Vs

Chatur Singh Taragi

RESPONDENT

Date of Decision: Sept. 25, 1975**Acts Referred:**

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

Citation: (1978) 111 ITR 849**Hon'ble Judges:** R.L. Gulati, J; Gopi Nath, J**Bench:** Division Bench**Advocate:** Deokinandan, for the Appellant; None, for the Respondent**Final Decision:** Allowed

Judgement

Gopi Nath, J.

This is a reference u/s 256(1) of the Income Tax Act, 1961.

2. The assessee filed a return of income of Rs. 51,185.82. The Income Tax Officer did not accept the account books and estimated the income at Rs. 1,03,404. On appeal, the estimate was reduced by Rs. 29,241 by the Appellate Assistant Commissioner of Income Tax and further a reduction of Rs. 2,000 was allowed by the Income Tax Appellate Tribunal. Since the returned income was less than 80% of the assessed income, penalty proceedings u/s 271(1)(c) were initiated and eventually a penalty of Rs. 8,100 was imposed by the Inspecting Assistant Commissioner of Income Tax. On appeal, the Income Tax Appellate Tribunal found that there was no direct proof of any concealment and the additions were mainly on account of the fact that the assessee's account books were not properly maintained and were rejected and thus the assessment was made on estimate basis. In the opinion of the Tribunal in such cases the charge of concealment could not be sustained. The Tribunal has cancelled the penalty.

3. The department is aggrieved and at its instance the Tribunal has referred the following question of law for the decision of this court:

"Whether, on the facts and in the circumstances of the case, there was material on record to justify the finding of the Tribunal that the assessee was not guilty of gross or willful neglect within the meaning of the Explanation to Section 271(1)(c) of the Income Tax Act, 1961 ?"

4. u/s 271(1)(c) of the Act penalty is leviable upon an assessee, if he conceals his income or furnishes inaccurate particulars thereof. As pointed out by the Supreme Court in [Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali](#), , penalty proceedings are penal in character and quasi-criminal in nature and, therefore, the onus lies upon the department to prove by positive material that a particular item which is added to the income of the assessee for purposes of assessment of tax is in reality the income of the assessee, which the assessee has deliberately concealed. Merely because the explanation of the assessee is inaccurate or false is by itself no ground for holding that the charge of concealment has been proved. In the instant case, the Tribunal has found that the additions made by the income tax Officer to the assessable income are all by estimate based upon the fact that the assessee's account books were not properly maintained and were not open to verification. There was no particular item of income which the assessee can be said to have omitted to include in its return. The Tribunal has held that the assessee had not concealed any stock of wood, as held by the Income Tax Officer and the Appellate Assistant Commissioner of Income Tax, who had not properly understood the entries in the account books. Nevertheless, the Tribunal found that there was some shortcoming in the accounts which rendered the accounts unacceptable and some addition to the returned income was called for. On these facts, the Tribunal has held that in such a case the charge of concealment could not be said to have been established.

5. It is true that the income finally assessed was less than 80% of the income returned by the assessee and as such the Explanation to Section 271(1)(c) became applicable. That Explanation casts the burden upon the assessee to prove that the difference between the returned and the assessed income is not due to any gross or willful neglect on his part. The Tribunal has found that, having regard to the facts and circumstances of the case, the difference between the assessed and the returned income was not due to gross or willful neglect on the part of the assessee. The Tribunal has also noticed that some minor items, like life insurance premium, Income Tax and personal expenses had not been included by the assessee in its income. But these items were clearly set out in the profit and loss account and, therefore, his failure to add back these items were merely on account of oversight and not due to any willful and gross neglect. In the opinion of the Tribunal it was a case of negligence which caused no prejudice to the revenue. We are satisfied that there was ample material on the record to justify the Tribunal's finding that the

assessee was not guilty of gross or willful neglect within the meaning of the Explanation to Section 271(1)(c) of the Income Tax Act.

6. We, accordingly, answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to the costs, which we assess at Rs. 200.