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## Commissioner of Income Tax Vs Garg Engineering Co.

### Income-tax Application No. 40 of 1996

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**Court:** Allahabad High Court

**Date of Decision:** Sept. 25, 1997

**Acts Referred:**

Income Tax Act, 1961 – Section 256(2), 271(1), 40

**Citation:** (1998) 148 CTR 341 : (1999) 235 ITR 451

**Hon'ble Judges:** R.K. Gulati, J; O.P. Jain, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### Judgement

R.K. Gulati, J.

This is an application u/s 256(2) of the Income Tax Act, 1961, filed at the instance of the Commissioner of Income Tax,

Lucknow. The applicant has submitted that two questions set out in this application are questions of law arising out of the order of the Income Tax

Appellate Tribunal and, therefore, a direction be issued to the Income Tax Appellate Tribunal to refer those questions for the opinion of this court.

The questions are as under :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in cancelling the penalty of Rs. 38,100 imposed

u/s 271(1)(c) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the decision of the Income Tax Appellate Tribunal is perverse inasmuch as the

relevant facts have not been properly evaluated and wrong conclusion is drawn ?

2. We have heard learned standing counsel for the Income Tax Department in support of this application, and are of the opinion that the order of

the Income Tax Appellate Tribunal is concluded by findings of fact and does not give rise to any question of law.

3. The Tribunal has in categorical terms held that the ingredients of Section 271(1)(c) of the Income Tax Act, 1961 (for short "the Act"), are not

satisfied in this case. It appears that the assessee had claimed a deduction of Rs. 63,993 in the computation of its total income for the assessment

year 1982-83 as an amount of interest paid to Garg Financiers. The deduction claimed was not allowed and the amount of Rs. 63,993 was added

back to the income of the assessee. It may be observed that the assessee is a partnership firm and the addition of the aforesaid amount was upheld

in appeal on the quantum side. While completing the assessment proceedings, the Income Tax Officer simultaneously initiated proceedings u/s

271(1)(c) of the Act for the imposition of penalty on the ground that the assessee had concealed its income or had furnished inaccurate particulars

of such income. The Income Tax Officer was of the view that there was apparently a close relation between the partners of the assessee-firm and

Garg Financiers from whom the funds were taken allegedly as interest-bearing loan at 17 per cent. per annum. The case of the Revenue was that in

fact the partners of the assessee-firm withdrew money from their respective capital accounts with the assessee-firm and deposited/transferred the

same to the loaner firm (Garg Financiers) which, in turn, invested those amounts with the assessee. In short, the amount of Rs. 63,993 claimed as

interest, according to the Revenue, was not a permissible deduction in view of Section 40(b) of the Act, being the amount of interest paid to a

partner of a firm. On this finding, the assessee was eventually subjected to a penalty of Rs. 38,100 by the Income Tax Officer u/s 271(1)(c) of the

Act after obtaining the approval of the concerned Inspecting Assistant Commissioner of Income Tax. The imposition of penalty was confirmed in

appeal by the Commissioner of Income Tax (Appeals).

4. However, when the matter came to be considered by the Income Tax Appellate Tribunal in second appeal, the Tribunal did not agree with the

Income Tax authorities and cancelled the penalty order. It held ;

We are not convinced of the argument given by the Departmental authorities that withdrawal or transfer of funds was in the nature of manipulation

of accounts in this case. The other firm to which the funds were transferred was a genuine independent firm. This by itself cannot be considered to

mean that false particulars of income had been filed or that the concealment of income had been effected especially because the transfer of funds

was reflected not merely through the book entry, but was passed through bank account also.

5. The ultimate findings of the Tribunal were that it was merely a case of difference of opinion and not a case of concealment. It is well known that

under the Act in the hierarchy the Income Tax Appellate Tribunal has been constituted as the final fact-finding authority. It has been entrusted with

the power to record its own findings on appreciation of evidence and the material placed before it. It is open to the Tribunal to believe or not

believe certain evidence and this is perfectly within its jurisdiction.

6. In the instant case the Tribunal has discussed the entire material and the circumstances of the case and, thereafter, has recorded its finding

considering the totality of the circumstances. The standard of proof for imposition of penalty is different from that on which an addition of an

income on the quantum side could be sustained. Where a case set up by the assessee in a given case was found plausible and there could

legitimately be two opinions about it, the fact that the Tribunal has accepted one version in preference to the other, does not make out a case for

penalty, nor guilt of concealment could be said to have been established. This is what exactly has happened in the instant case. The question

whether the assessee was guilty of concealment or furnishing of inaccurate income within the meaning of Section 271(1)(c) is essentially one of fact.

It could not be shown to us that the Tribunal misdirected itself in any manner in appreciating the material that was before it or it omitted to consider

the relevant factors germane to the imposition of penalty for concealment u/s 271(1)(c) of the Act.

7. In view of the above discussion, this application is without merit and is, accordingly, rejected, by saying that the order of the Income Tax

Appellate Tribunal is concluded by the findings of fact and does not give rise to any statable question of law.