

(2010) 08 JH CK 0057**Jharkhand High Court****Case No:** None

The Commissioner of Income
Tax

APPELLANT

Vs

Shri Satpal Sachdewa

RESPONDENT**Date of Decision:** Aug. 31, 2010**Acts Referred:**

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

Hon'ble Judges: Sushil Harkauli, J; Dhirubhai Naranbhai Patel, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

1. We have heard Learned Counsel for the Income Tax Department.

2. This is an application seeking calling of reference u/s 256(2) of the Income Tax Act, 1961 (hereinafter to be referred as **the Act**), as stood at that relevant time. The question, which has been sought to be called, reads as follows:

Whether in the facts and circumstances of the case and in law the Ld. Tribunal was justified in confirming the order of the CIT (A) of cancelling the penalty under Section 271(1)(c) of the I.T. Act when the said penalty has been imposed on the basis of admitted undisclosed income shown in the revised return filed after detection of concealed income by the Department?

3. We find from the order of the Tribunal passed u/s 256(1) of the Act that the revised return was not filed because of detection of concealed income, but was filed voluntarily because a general inquiry was going on.

4. Learned Counsel for the Department has argued before us that this finding that the revised return was filed voluntarily and not because of the detection of concealed income, is perverse finding.

5. This argument cannot be entertained at this stage, because the department never sought from the Tribunal u/s 256(1) of the Act that the following question should be referred:

Whether the finding that the revised return was filed voluntarily and not because of detection of concealed income was perverse.

6. Because such a question was not raised u/s 256(1) of the Act, therefore, it cannot be entertained u/s 256(2) of the Act and factually no such question has been sought to be called in this application u/s 256(2) of the Act.

7. Therefore, this Court must proceed on the basis of the finding recorded by the Tribunal that the revised return was voluntary and not because of detection of concealment. That being the situation, we agree with the order of the Tribunal refusing to refer the matter u/s 256(1) of the Act, that no such penalty u/s 271(1)(c) of the Act could be imposed.

8. This application u/s 256(2) of the Act is, therefore, rejected.