



HIGH COURT OF DELHI AT NEW DELHI

I.T.R. NO. 91/86Date of decision: 14.5.2001

Dinesh Kumar PETITIONER
 L/H of Shri Shyam Sunder
 through: Mr. K. R. Manjani,
 Advocate.

- versus -

THE COMMISSIONER OF INCOME-TAX RESPONDENT
 DELHI-III.
 through Mr. R. D. Jolly,
 with Mr. Ajay Jha
 Advocates.

Coram :

THE HON'BLE MR JUSTICE ARIJIT PASAYAT, C. J.
 THE HON'BLE MR JUSTICE D. K. JAIN.

- i) Whether Reporters of local papers may be allowed to see the judgment ?
- ii) To be referred to the reporter or not ?

ARIJIT PASAYAT, C. J. (ORAL)

Pursuant to direction given by this Court under Section 256(2) of the Income Tax, 1961 (in short the 'Act'), following question has been referred by the Income Tax Appellant Tribunal Delhi Bench 'A' (in short "the Tribunal") for the opinion of this Court.

" Whether, on the facts and circumstances of the case, the Tribunal was justified in law in holding that levy of penalty for concealment was correct?"

2. In short the factual position as emerges from the statement of case is as follows:-

Assessee had returned his total income ~~Rs. 9.000/-~~ Rs. 9.000/- for the assessment year in question, i.e.



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1973-74 and assessment was completed at Rs.20,100/-. A sum of Rs.10,000/- which was shown as Cash Credit from his wife Smt. Prabha Kumari, was not accepted as a genuine loan and was treated as the assessee's income from undisclosed sources. The addition was challenged before the Appellate Asstt. Commissioner of Income tax (in short 'AAC') and before the Tribunal, but without any success. Penalty Proceedings under Section 271 (1) (C) of the Act were initiated by issuing show cause notice. After considering and analysing the explanation furnished, Income-tax officer imposed penalty of Rs.10,000/-. The said levy was confirmed by the AAC as well as by the Tribunal. Assessee moved an application under Section 256 (1) of the Act for reference of a question, stated to be a question of law. Same having been rejected by the Tribunal, this Court was moved and pursuant to directions given by this Court, the question as set out above has been referred for opinion.

3. We have heard learned counsel for the parties. Learned counsel for the assessee stated that the assessee had discharged the onus put on him and to say that there was no substance in the explanation which was offered or that same was not supported by materials has no legal foundation. Learned Counsel for the Revenue on the other hand, submitted that after analysing the factual position, Income tax



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Officer, AAC and the Tribunal came to hold that the explanation offered by the assessee was not acceptable and the case was clearly covered by the explanation to clause (C) of Section 271 (1) of the Act. It is further submitted that the conclusions are essentially factual giving rise to no question of law.

4. The question whether in a given case the explanation offered by the assessee is acceptable or not is essentially one of fact giving rise to no question of law. We find that the forums below have analysed the case of the assessee, and the explanation offered by him and concluded that the source of the loan allegedly obtained was not properly explained. This conclusion is also one of fact. That being the position, no question of law arises out of the order of the Tribunal. Therefore, we decline to answer the question referred.

The reference is disposed of accordingly.



CHIEF JUSTICE.



D.K. JAIN, J.

May 14, 2001
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