

Kesho Ram Khushi Ram v. Commissioner of Income-tax, Haryana
(G. C. Mital, J.)

as stated supra there are positive instructions to the effect "As such when an officer becomes ineffective in a particular appointment for twenty-one days either due to his attachment on disciplinary grounds or due to sickness by way of hospitalisation, he relinquishes the acting rank as he is no longer performing the duties for which he was granted the acting rank." The action of the authorities has been taken strictly in accordance with these instructions and no fault can, therefore, be found with it.

(11) For the foregoing reasons, the judgment of the learned Single Judge is set aside, the appeal is allowed and the writ petition is dismissed. There will, however, be no order as to costs.

R.N.R.

Before : G. C. Mital and S. S. Sodhi, JJ.

KESHO RAM KHUSHI RAM,—Applicant.

versus

COMMISSIONER OF INCOME-TAX, HARYANA,—Respondent.

Income Tax Reference No. 23 of 1982

April 6, 1989.

Income Tax Act (XLIII of 1961) S. 271(1)(c)—Assessee's returned income more than 80 per cent of the assessed income—Burden of proof on department for levying penalty—Department putting burden on assessee—No satisfactory explanation furnished by assessee—Imposition of penalty by the department on assessee—Such imposition—Whether legal.

Held, that we are of the view that the Tribunal was not right in sustaining the penalty by placing wrong burden of proof on the assessee. Accordingly, the matter is sent back to the Tribunal to hear the appeal of the assessee afresh and take fresh decision after placing burden on the department in accordance with law.

(Para 3).

Reference under Section 271(1)(c) of the Income-tax Act, 1961 by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the Tribunal's order dated 13th May, 1981 in I.T.A. No. 895 of 1979, Assessment Year 1974-75 :

"Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in sustaining the penalty of Rs. 9400 levied by the Income Tax Officer under Section 271(1)(c) of the Income Tax Act, 1961?"

B. S. Gupta, Sr. Advocate with Sanjay Bansal, Advocate, for the petitioner.

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

In the assessment proceedings the assessee was finally assessed at Rs. 50,892 as against the returned income of Rs. 41,490 for the assessment year 1974-75. The returned income was more than 80 per cent of the assessed income, and, therefore, the explanation was not applicable and the burden of proof was on the department to show that the penalty was leviable. However, all authorities upto the Tribunal seem to have placed the burden on the assessee and came to the conclusion that since there is no satisfactory explanation furnished by the assessee penalty was imposed on the concealed income of Rs. 9,400. On facts the Tribunal has referred the following question at the instance of the assessee for opinion :

“Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in sustaining the penalty of Rs. 9,400 levied by the Income Tax Officer under Section 271(1)(c) of the Income-tax Act, 1961?”

It is beyond dispute that explanation is not applicable as the returned income was more than 80 per cent of the assessed income and, thus, the burden of proof was on the department but in this case on a reading of the Tribunal's order it appears as if burden of proof was on the assessee and since he failed to give any satisfactory explanation the penalty was leviable. Since the Tribunal proceeded to consider the matter from a wrong view point it is a case which deserves to be sent back for fresh decision in accordance with law.

For the reasons recorded above, we are of the view that the Tribunal was not right in sustaining the penalty by placing wrong burden of proof on the assessee. Accordingly, the matter is sent back to the Tribunal to hear the appeal of the assessee afresh and take fresh decision after placing burden on the department in accordance with law. The reference is answered in the aforesaid terms in favour of the assessee leaving the parties to bear their own costs.

P.C.G.