

Supreme Court of India

Commissioner Of Income-Tax vs Shri Iron Foundary Engineering ... on 10 January, 1995

Equivalent citations: 1997 225 ITR 684 SC

Bench: S Bharucha, K Paripoornan

JUDGMENT

1. The appeal is filed by the Revenue, against the order of the Calcutta High Court declining to direct the Income-tax Appellate Tribunal to refer to it, under Section 256(2) of the Income-tax Act, 1961, the following question :

Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the sum of Rs. 55,000 included in the assessee's total income as unexplained cash credits cannot be taken into account to determine whether the payment made by the assessee of a larger dividend than that declared would not be unreasonable ?

2. The Tribunal took the view that no question of law was involved.

3. The Revenue had contended before the Tribunal that the addition of Rs. 55,000 in arriving at the total income of the assessee could not be excluded from its total income for the purpose of determining whether a larger dividend could be declared. In other words, the Revenue sought to invoke the provisions of Section 104, as it then read, of the Income-tax Act, 1961. The Tribunal stated that the said credit had been sought to be explained by the assessee but it had held that its addition should be made for assessment purposes because summons could not be served on the assessee's creditors and because the principal amounts were not paid by cheques. In deciding the penalty appeal, however, the Tribunal had held that no evidence had been led on behalf of the Revenue to prove that the assessee's explanation was false. There was also no evidence which conclusively established the concealment of income. The penalty appeal had been rejected. For the aforesaid reasons, the Tribunal had concluded that its finding that the amount of Rs. 55,000 which was included in the assessee's total income could not be taken into account for determining whether a larger dividend could be declared for the purposes of Section 104 was a finding arrived at with reference to the particular facts of the case and no question of law arose therefrom.

4. The High Court rejected the application under Section 256(2) without giving reasons.

5. The Tribunal having declined to impose a penalty upon the assessee because it had not been established that the assessee had deliberately concealed income or furnished inaccurate particulars, it could not have added to the assessee's total income, for the purposes of Section 104, the amount of Rs. 55,000. The provisions of Section 104 are quasi-penal in nature and what would apply in regard to a penalty would also apply in regard to these provisions. These were conclusions on the facts. No question of law, therefore, could be said to have arisen which required the High Court to call for its reference under Section 256(2).

6. The appeal is, accordingly, dismissed and the order of the High Court rejecting the application under Section 256(2) is upheld.

7. There shall be no order as to costs.