

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8175 OF 2003

Mohd. Mohtram Farooqui, Mohalla Pirzadgan ...Appellant

Versus

Commissioner of Income Tax, Rajasthan ...Respondent

O R D E R

Having examined the question of law in the context of the facts placed on record, we are of the view that the matter needs to be remitted to the Assessing Officer (AO).

In this case, the Tribunal has set aside the levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961, on the basis that the AO has not examined the concerned persons. In this connection, it may be stated that an amount of Rs.5,92,340/- was seized by the Police Thana, Sikar from the appellant on 8th April, 1992. A Panchnama was drawn by the Department on 9th April, 1992 and the cash amount was requisitioned on the same date.

Consequent to the seizure, the statement of the assessee was recorded by the Deputy Director of Investigation, Jaipur, wherein the assessee stated that the cash belonged to his brother, his brother-in-law and a part belonged to him. According to the Tribunal, the AO should have summoned the assessee's brother and brother-in-law.

According to the Tribunal, the AO did not examine any of the concerned persons. **According to the Tribunal, the AO has failed to apply his mind to the facts of the case. In the circumstances, according to the Tribunal, since the AO did not examine the relevant persons and since he did not find any explanation furnished by the assessee to be false, the entire penalty proceedings came to be quashed. In our view, on the facts of this case, the Tribunal should have remitted the case to the AO particularly, in view of the fact that the assessee has raised a legal contention on the applicability of Explanation-5 to**

Section 271(1)(c) of the Act.

In the circumstances, we remit this case to the AO. We may add that the AO will consider one more aspect, namely, whether the assessee has filed income tax returns in the past prior to the relevant Assessment Year 1993-94 and whether he has been filing income tax returns subsequent to the relevant assessment year. The AO will also find out the amount of income returned by the assessee, if any, during the assessment years prior to Assessment Year 1993-94 and the returned income for the assessment years subsequent to the relevant Assessment Year 1993-94. This point is relevant for deciding the question as to whether penalty proceedings were rightly initiated against the assessee under Section 271(1)(c) of

the Act.

Before concluding, we may clarify that we do not wish to express any opinion on the merits of the case. We further clarify that contentions on both sides are expressly kept open. Subject to above, Civil Appeal stands disposed of and the matter is remitted to the AO for de novo consideration in accordance with law.

No order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(AFTAB ALAM)
New Delhi,
February 02, 2010.
ITEM NO.106 COURT NO.2 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(s). 8175 OF 2003

MOHD. MOHTRAM FAROOQUI MOHALLA PIRZADGAN Appellant (s)

VERSUS

COMMNR. OF INCOME TAX, RAJASTHAN Respondent(s)

(With office report)

Date: 02/02/2010 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM

For Appellant(s) Mr. Sanjay Jhanwar, Adv.
Mr. Tarun Dua, Adv.
Mr. Prakul Khurana, Adv.

Mr. K.C. Dua,Adv.

For Respondent(s) Mr. Bishwajit Bhattacharya, Adv.

Mr. Arijit Prasad, Adv.

Mr. D.K. Singh, Adv.

Mr. Aditya Sharma, Adv.

Mr. B.V. Balaram Das,Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal is disposed of, in terms of the signed order.

No order as to costs.

(N. ANNAPURNA) (MADHU SAXENA)

COURT MASTER COURT MASTER

(Signed order is placed on the file)