

SUREME COURT OF INDIA

Commissioner of Income-Tax (Central), Calcutta

Vs.

Daulatram Rawatmall on

(J.C. Shah and V Ramaswami JJ.)

10.09.1969

JUDGMENT

J.C. SHAH J.

1. In proceedings for levy of penalty under the Indian Income-tax Act, 1922, which were carried in appeal to the Income-tax Appellate Tribunal, Calcutta Bench, the Tribunal was moved under Section 66(1) of the Indian Income-tax Act, 1922, for referring the following question to the High Court at Calcutta :

Whether, on the facts and circumstances of the case, penalty could be levied on the assessee under Section 28(1)(c) of the Indian Income-tax Act, 1922, for concealment of the fixed deposit of Rs. 5,00,000 in the name of R. P. Agarwal ?

2. The Tribunal was of the view that the question was not capable of reference to the High Court and one of the reasons set out by the Tribunal was that the question assumed that there was concealment of the fixed deposit of Rs. 5,00,000 in the name of R.P. Agarwal by the assessee.

3. Aggrieved by the order passed by the Tribunal a petition was moved under Section 66(2) of the Indian Income-tax Act, 1922, by the Commissioner of Income-tax before the High Court at Calcutta. The High Court issued a rule and after hearing counsel dismissed the petition without recording any reasons.

4. In our judgment the High Court was not justified in dismissing the petition without any reasons. Whether the question whether penalty was leviable in the circumstances of the case on the assumption sought to be involved in the question or with modification, arose out of the order of the Tribunal had to be dealt with by the High Court and for rejecting the petition some reasons had to be given. Since the High Court has not chosen to give any reasons, we set aside the order of the High Court and direct that the case be remanded to the High Court to be dealt with and disposed of in accordance with law. There will be no order as to costs in this appeal. We express no opinion on the merits of the case.