

CIT, Bhopal

Vs

M/S. Tawarfe Motilal

Civil Appeal No. 739 of 1975

(R. S. Pathak, M. H. Venkatachaliah JJ)

11.11.1987

ORDER

1. The only point raised before the High Court by learned counsel for the assessee (the respondent before us) was that Section 68 of the Income Tax Act, 1961 was attracted by reason of Section 297(2)(d)(ii) of that Act and that therefore, the penalty imposed could not be levied for the assessment year 1958-59. It was contended that although Section 297(2)(d)(ii) of the Act permitted the application of the provisions of the Income-tax Act, 1961, Section 68 must be deemed to be a procedural provision and therefore, the application of Section 68 invalidated the imposition of penalties for the aforesaid assessment year. In this appeal, learned counsel for the appellant contends that the view taken by the High Court is erroneous and Section 68 of the Income-tax Act, 1961 must be regarded as a substantive provision and not a procedural provision. Reliance has been placed by learned counsel for the appellant on *Damodar Hansraj v. CIT* (118 ITR 999 (Cal)), *Bhogilal Virchand v. CIT* (127 ITR 591 (Bom)), *CIT v. Dharamchand Anandkumar* (128 ITR 219 (MP)), *CIT v. R. Dalmia* (157 ITR 221 (Del)) and *CIT v. Bihar Cotton Mills Ltd.* (160 ITR 275 (Pat)) We are in agreement with the declaration of law made by the High Courts in these cases and we hold that Section 68 of the Income tax Act must be regarded as a substantive provision. That being so, Section 68 could not be invoked and therefore, this appeal must be allowed. The appeal is allowed, the judgment of the High Court dated August 30, 1974 is set aside and the answer returned by the High Court to the second question referred to is reversed. The question is answered in the affirmative in favour of the revenue and against the assessee.

2. The appeal is disposed of accordingly. There is no order as to costs.

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