(2011) 07 DEL CK 0227

In the Delhi High Court

Case No : ITA No. 752 of 2011

Alok B. Mathur APPELLANT

Vs

Appeal RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Income Tax Act, 1961 — Section 138, 139(1), 139(2), 140A, 142(1)

Citation : (2011) 8 AD 315

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : V.K. Sabharwal, for the Appellant; N.P. Sahni, Senior Standing Counsel., for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This appeal is preferred by the Assessee against the orders dated 30.06.2010 passed by the Income Tax Appellate Tribunal (hereinafter referred to as ''the Tribunal'') affirming the order of penalty levied u/s 271(1)(c) of the Income Tax Act (for brevity ''the Act''), which was affirmed by the Commissioner of Income Tax (Appeals) as well. The penalty came to be imposed under the following circumstances:

The Assessee had filed income tax return in respect of Assessment Year 2001-02 declaring income of Rs. 1,24,94,515/-. The Assessee had given loan which was not shown as income tax return. This could not be found in the regular assessment. However thereafter, the Assessing Officer (AO) received an information from the ITO Ward 9 (1), New Delhi indicating that Shri Rajesh Duggal, Managing Director of M/s. Spear Head Digital Studio Pvt. Ltd. had applied for shares. He arranged Rs. 35,00,000/- to enable him to apply for the said shares. This money was advanced as unsecured loan to Shri Rajesh Duggal and the Assessee had not shown this loan in the income tax return. Notice u/s 148 was issued on 10.12.2007, as according to the AO, the aforesaid information reveals that income of Rs. 35 lacs had escaped assessment.

2. Pursuant thereto, the Assessee filed income tax return declared at Rs. 35,45,980/- on asking explanation of sources of laon of Rs. 35 lacs given to Shri Rajesh Duggal. He submitted that he was unable to find old records and to gain peace of mind, he voluntarily surrendered the amount of Rs. 35 lacs for the Assessment Year 2001-02. In these circumstances, addition of Rs. 35 lacs was made.

3. Feeling aggrieved, the Assessee challenged the aforesaid order before the CIT (A). Initially, the Assessee submitted that he had not filed any return on the counter. The proposed return was given to the AO during the assessment proceedings and this return could not be treated as filed u/s 148 read with Section 139(2) of the Act. According to the Assessee, in the absence of return filed u/s 139(1), notice u/s 143(2) and 142(1) of the Act was not valid. The order should have been passed u/s 144 of the Act and not u/s 143(3) read with Section 147 of the Act. The CIT (A) rejected this contention on the ground that notice u/s 143(2) of the Act issued to the Assessee was duly served upon and thereafter, this return was filed. The Assessee also made an attempt to challenge the addition of Rs. 35 lacs on merits on the ground that he had sufficient cash balance in the bank account from where he could issue the cheque of Rs. 35 lacs. This ground was rejected by the CIT (A) on the ground that no such plea was ever raised before the AO. The Assessee himself filed the return disclosing income of Rs. 35,45,980/- and even paid the tax partly u/s 140A of the Act.

4. Feeling aggrieved by the above decision of the CIT (A), the Assessee approached the Tribunal. While dismissing the appeal, the Tribunal accepted the view of the CIT (A).

5. In the aforesaid circumstances, we are of the view that no question of law arises. This appeal is accordingly dismissed.

