(2011) 02 KAR CK 0039

In the Karnataka High Court

Case No : ITA No. 2806 of 2005

CIT and Another APPELLANT

Vs

Bharati Bt Ltd. RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:
Income Tax Act, 1961 — Section 201, 271 C, 273 B

Citation : (2011) 02 KAR CK 0039

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Veena Jadhav, for the Appellant; Raghuram and Chythnaya, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is by the revenue against the order passed by the Tribunal cancelling the penalty levied u/s 271C of the income Tax Act.

2. The assessee was earlier known as M/s. Wipro BT Ltd. It is one of the companies associated with group Wipro Limited. It had taken a premises on lease and paid rentals of Rs. 54,90,000 to M/s Wipro Limited. However, the assessee had failed to deduct tax at source u/s 194-I of the Act. Therefore, the assessing officer proceeded to initiate penalty proceedings u/s 271C of the Act. The assessee did not file any reply to the show cause notice issued. However, before the assessing officer they contended that M/s. Wipro Limited had paid the entire tax. Therefore, it was under the impression that no TDS may be made. That apart, the assessee had incurred a huge loss and sabsequently the rental payable was also waived.

3. The assessing authority did not accept the said explanation and proceeded to impose penalty u/s 271C of the Act by his order dated 22.6.2001. Aggrieved by the same, the assessee preferred an appeal. The said appeal came to be dismissed. Against the said order, the assessee preferred an appeal to the

Tribunal. The Tribunal held that the assessee did not deduct the tax because the payee had paid the entire amount of tax. Therefore, he bona fide believed that he is not required to pay tax. It is because of that reason the assessing officer did not hold the assessee as assessee in default u/s 201. The bona fide belief is further fortified by the fact that ultimately the payee has waived the payment of rent due to huge losses incurred by the assessee. In those circumstances, the Tribunal held that there was sufficient cause for not deducting the tax and, therefore, penalty imposed was illegal. Accordingly the order passed by the assessing officer as well as the appellate authority was set aside. Aggrieved by the same the revenue is in appeal.

4. Learned counsel for the revenue contended that the cause shown by the assessee does not constitute sufficient cause so as to waive penalty u/s 273B and therefore, she submits the order of the Tribunal requires to be interfered with.

5. Per contra, the learned counsel for the assessee supported the impugned order.

6. Learned Counsel for the assessee pointed out that because the assessee was occupying the premises belonging to a group company, there was no lease agreement between the parties. In fact no rent was paid. It is only in the course of audit proceedings, it was pointed out that atleast an entry should be made in their accounts showing payment of rent, even though rent is not actually paid. In those circumstances they made an entry in the books of accounts. Consequently the payee paid the tax due. In those circumstances, the question of deducting tax before payment did not arise. They bona fide believed that it is not liable to be deducted.

7. The Tribunal has rightly appreciated the facts of the case and therefore, it has cancelled the penalty imposed. It is clear from the material on record that when the assessing officer issued a show cause notice in the penalty proceedings. It was duly served and the assessee participated in the proceedings, but did not put forth his case in writing. Even before the appellate authority the case which is now sought to be made out before us, was not put forth nor any documents was produced to substantiate the claim. In the absence of that material the Tribunal was not justified in accepting the case of the assessee on his oral submissions or on written submissions and in interfering with the order passed by the lower authorities. If really no rent is paid as contended by the assessee and only in the course of audit proceedings, on advice they made and entry and consequently the payee has paid the entire tax probably they can be given the benefit u/s 273B. Otherwise it is difficult to uphold the order of the Tribunal. In those circumstances we are of the view that justice of the case would be met by giving the assessee an opportunity to substantiate his claim by producing requisite documents so that the assessing officer can redo the assessment once again after hearing the assessee and in accordance with law. Hence, we pass the following order:-

(a) Appeal is allowed.

(b) The impugned orders passed by all the authorities are hereby set aside.

(c) The entire matter is remanded to the assessing officer to give an opportunity to the assessee to put forth his case in writing or produce documents to substantiate his claim and thereafter to consider his case on merits and in accordance with law without being in any way influenced by any of the observations made by this court or by any of its higher authorities.

