
(2011) 03 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : I. T. A. No. 14 of 2011

CIT

APPELLANT

Vs

Careers Education And Infotech P. Ltd.

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Evidence Act, 1872 — Section 58
Income Tax Act, 1961 — Section 133A, 271(1)

Citation : (2011) 336 ITR 257

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Revenue u/s 260A of the income tax Act, 1961 (for short, "the Act"),

against the order of the income tax Appellate Tribunal, New Delhi, dated 31-7-2009, in I. T. A. No. 1868/Del/2007 for the assessment year

2003-04, claiming following substantial questions of law :

1. Whether on the facts and circumstances of the case and in law, the Hon'ble income tax Appellate Tribunal was right in deleting the penalty

imposed u/s 271(1)(c) without appreciating that the act of disclosing the concealed income was not voluntary but consequent upon the survey

operation u/s 133A of the income tax Act, 1961, wherein several fallacies and discrepancies were detected and as a result thereof the assessee

revised his income tax return and surrendered the amount of Rs. 15,00,000 ?

2. Whether on the facts and circumstances of the case and in law, the Hon'ble income tax Appellate Tribunal was right in deleting the penalty

imposed u/s 271(1)(c) without appreciating that the disclosure of concealed

income was consequent upon the survey operation when during the course of survey operation itself, the assessee surrendered a sum of Rs. 15,00,000 for this assessment year thereby admitting to concealment of income ?

2. The assessee is a coaching centre. During the course of survey, the assessee surrendered the additional income and also filed a revised return

accordingly. The Assessing Officer accepted the revised return made by the assessee but also initiated penalty proceedings. Thereafter, penalty

was also levied on the assessee which was upheld by the Commissioner of income tax (Appeals) following the judgment of the Madras High Court

in P. Govindaswamy Vs. Commissioner of Income Tax, . Therein, it was held that since u/s 58 of the Indian Evidence Act, 1872, admitted facts

need not be proved, once the assessee made surrender, it could be taken to be admitted that the assessee had concealed income. On appeal, the

Tribunal set aside the above view as follows :

From the record, we found that the addition of Rs. 15 lakhs was made only on the basis of surrender made during the course of survey and by

accepting the revised return filed by the assessee. In the assessment order, the Assessing Officer has not pointed out even a single defect either in

the books of account or vouchers etc. maintained by the assessee or in the system of accounting being followed for disclosing true and correct

income. Not only the survey team but during the course of assessment the Assessing Officer had all the materials before him to find out if there are

any discrepancies which can be co-related to the amount of surrender made by the assessee. However, the Assessing Officer has not uttered a

single word in the assessment order to say that there was any concealment of income of the assessee having noticed by the survey team or by the

Assessing Officer himself. The offer of additional income of Rs. 15 lakhs was made to buy peace at the time of survey in order to avoid the

harassment at the hands of the survey team. Even after surrender, all kinds of enquiries were made by the survey team as well as by the Assessing

Officer while framing assessment on the basis of the seized documents, books of account, vouchers etc. maintained by the assessee, and after

thorough enquiry, the income of the business was accepted at original returned income along with the additional income offered by the assessee.

The Assessing Officer has imposed the penalty considering the additional income as income from undisclosed sources and has alleged the assessee has filed revised return only after detection of concealed income during the course of survey. In case there was any detection of concealed income either by the survey team or by the Assessing Officer; why the same has not been pointed out in the assessment order. Not an iota of evidence was narrated to support the addition made except the surrender made by the assessee himself. When no concealment was ever detected by the survey team or by the Assessing Officer, no penalty was imposable. Recently, the Hon"ble Punjab and Haryana High Court in the case of Sidhartha Enterprises (2010) 322 ITR 80 (P&H), vide order dated 14-7-2009, held after considering the decision of the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, that the judgment of the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. What has been laid down is that qualitative difference between criminal liability u/s 276C and penalty u/s 271(1)(c) had to be kept in mind and approach adopted to the trial of a criminal case need not be adopted while considering the levy of penalty. Even so, the concept of penalty has not undergone a change by virtue of the said judgment. It was categorically observed that penalty is imposed only when there is some element of deliberate default and not a mere mistake. This being the position, the furnishing of inaccurate particulars was simply a mistake and not a deliberate attempt to evade tax. The Hon"ble Supreme Court in the case of Commissioner of Income Tax Vs. Suresh Chandra Mittal, observed that where the assessee has filed a revised return showing higher income and the assessee has surrendered the income after persistent queries by the Assessing Officer and where the revised return has been regularized by the Revenue, the explanation of the assessee that he has declared the additional income to buy peace of mind and to come out of vexed litigation could be treated as bona fide, accordingly the levy of penalty u/s 271(1)(c) was held to be not justified. In the instant case before us, as per the surrender made, by the assessee, a revised return was filed and which has been accepted as it is without making any alteration therein nor was there any adverse

observation in the assessment order with regard to any discrepancies to correlate the same with the amount of surrender. We accordingly do not

find any merit in the action of the lower authorities for imposing penalty u/s 271(1)(c). On the facts and circumstances, the instant case is not a fit

case for levy of penalty.

3. We have heard learned counsel for the appellant.

4. Learned counsel for the appellant submits that concealment was rightly inferred and penalty was justified.

5. We are unable to accept the submission. No doubt even voluntary surrender of concealed income may not exonerate the assessee of its liability

to pay penalty if it can be held that there was concealment of income or furnishing of inaccurate particulars. In the present case, the Tribunal has

recorded a categorical finding that there was no material to infer concealment of income or furnishing of inaccurate particulars. The contention that in

every case where surrender is made inference of concealment of income must be drawn u/s 58 of the Evidence Act cannot be accepted. The

judgment of the Madras High Court also does not lay down such a wide proposition. The observations therein are on the facts of that case. The

said, judgment is, thus, distinguishable.

6. No substantial question of law arises. The appeal is dismissed.