
(2010) 07 P&H CK 0207
In the Punjab And Haryana At Chandigarh
Case No : ITA No. 161 of 1999 (A.Y. 1982-83)

CIT

APPELLANT

Vs

Sadhu Singh and Sons

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Income Tax Act, 1961 — Section 271(1)(c)

Citation : (2012) 344 ITR 316

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

Bench : Division Bench

Advocate : Urvashi Dhugga, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This appeal filed u/s 260A of the income tax Act, 1961 (for short "the Act"), at the instance of the Revenue is directed against the order of the income tax Appellate Tribunal, Amritsar Bench, Amritsar (for short "the Tribunal"), passed on 27-5-1999, in income tax Appeals Nos. 467 and 468 (ASR)/1990, for the assessment year 1982-83. The facts as narrated in the petition are culled out hereunder.

2. The matter herein relates to assessments made for two periods during the assessment year 1982-83, the first being for the period up to 5-8-1981, and the second from 16-8-1981 up to 31-3-1982, because of change in the constitution of the assessee-firm. During the course of assessment proceedings, it was detected that the assessee had suppressed the value of closing stock. Besides this, certain deposits were found which were not disclosed in the books of account of the assessee. For the first period up to 15-8-1981, suppression in the value of closing stock was worked out at Rs. 36,536 and for the remaining period up to 31-3-1982, at Rs. 1,01,970. The assessee on being checked furnished a revised return by enhancing its G.P. rate to 22 per cent. The matter again became subject-matter of scrutiny by the assessing officer. It was found that the assessee had not disclosed deposits of Rs. 18,000 and, apart from it, a cash

credit in the sum of Rs. 26,000 was not found to be genuine. The assessing officer afforded an opportunity to the assessee to explain the above aspects and thereafter the said amounts were made as additions by treating them as income of the assessee. Accordingly, the assessing officer imposed penalties u/s 271(1)(c) of the Act on the assessee in the sum of Rs. 44,090 for the first period and Rs. 1,92,600 for the remaining period, vide two separate orders dated 20-6-1988.

3. The assessee challenged the above orders of penalties before the Commissioner of income tax (Appeals) (in short "the CIT(A)")-The appeal was accepted, vide order dated 29-1-1998. The appeal preferred by the Revenue against the order of the Commissioner of income tax (Appeals) was, however, dismissed, vide order dated 27-5-1999. This is how the present appeal at the instance of the Revenue came to be filed.

4. The appellant has proposed the following two questions said to be substantial questions of law for determination by this court:

1. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in law in deleting the penalties imposed u/s 271(1)(c) by holding that such penalties cannot be imposed upon such income, which stands disclosed in the revised return prior to regular assessment particularly when the concealed income had already been detected and pointed out to the assessee prior to the filing of revised return?

2. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in law in holding that the Commissioner of income tax (Appeals) was fully justified in deleting the penalty imposed u/s 271(1)(c) by the Assessing Officer in respect of the bank deposits and the cash credits by holding that the same cannot be treated as concealed income of the assessee as he had disclosed all material facts before the assessing officer?

5. The Tribunal, while upholding the order of the Commissioner of income tax (Appeals), deleting penalties imposed u/s 271(1)(c) of the Act on the assessee observed as under:

11. In this case, it has been observed by the Commissioner of income tax (Appeals) that there is no quantitative suppression of stocks by the assessee but the difference in valuation of stocks has been detected only because of the lower G.P. It has also been observed by the Commissioner of income tax (Appeals) that no sales or purchase outside the books of account have been detected by the assessing officer. Guilty conscious or the mala fide intention also cannot be attributed to the assessee as he has not made any effort to erase the cuttings occurring in the books of account; rather the assessee voluntarily produced these books of account before the assessing officer during the course of hearing. Even pending the finalisation of the assessment, the assessee voluntarily came forward for the application of higher rate of G.P. by filing a revised return accordingly for the second and third period subject to no penalty u/s 271(1)(c) of the income tax Act, 1961. Even these observations of the Commissioner of

income tax (Appeals) that the revised return was filed by the assessee in response to an undertaking given by the assessing officer have not been assailed by the Departmental representative during the course of arguments.

12. We also find from the observation of the Commissioner of income tax (Appeals) that specific addition has been made by the assessing officer on the basis of difference in valuation of closing stock. Although the stock at the second period as per the revised return was to the tune of Rs. 2,36,544 as against shown in the books of account originally by the assessee at Rs. 2,21,250 and it shows that, in fact, the valuation of closing stock varied due to the application of higher rate of G.P. and consequently this was the case of the lower G.P. as shown by the assessee rather than the case of suppression of stock by the assessee. By filing the revised return and showing the value of closing stock at higher figure of Rs. 2,36,554 as against original valuation at Rs. 2,21,250 the assessee has simply corrected the error, if any, in the valuation of closing stock and, in our opinion, the assessee was well within his legal rights to make such correction at any time before the assessment was completed as has been held by the Punjab and Haryana High Court in the case of Commissioner of Income Tax Vs. Sardar Singh Sachdeva,

6. A perusal of the order of the Tribunal shows that it came to the conclusion that there was no mens rea for concealment of income which had formed the basis for making additions to the income of the assessee. The assessee had disclosed the G.P. rate of 22 per cent, in the revised return and on that basis the intentional concealment could not be held. Further, the Assessing Officer had not found any sales or purchases outside the books of account and if there had been any intention in the mind of the assessee, the latter would have erased those cuttings.

7. Enormously on the same reasoning, the addition of a sum of Rs. 18,000 to the income of the assessee was also held to be an unintentional concealment of income. The assessee had furnished explanation that this amount was withdrawn from the books of account of M/s. Joginder Singh and Parduman Singh, income tax assessee, and the same was wrongly credited to the bank account of the assessee-firm due to wrong entry made in the deposit slips and had produced material in support thereof before the assessing officer. After considering the plausibility of the said explanation, the Commissioner of income tax (Appeals) as well as the Tribunal had concluded that no penalty on that amount was exigible.

8. Similarly, the explanation with regard to cash credit totalling Rs. 26,000 in the name of Sh. Narinder Singh, Daulat Ram, Ravinder Pal Singh and Tarlochan Singh was not doubted by the Commissioner of income tax (Appeals), and the Tribunal and, thus, penalty levied by the Assessing Officer had been deleted.

9. The above is a concurrent finding of fact recorded by the appellate authorities below, which is based on appreciation of evidence and the same does not call for interference by this court as we find that there is no illegality or perversity in the

said finding nor could any be pointed out by the learned counsel for the Revenue. In view of the above, there is no merit in the appeal and the same is dismissed.