(2013) 09 AHC CK 0210

In the Allahabad High Court

Case No : Income Tax Appeal No. 143 of 2009

Commissioner Income Tax APPELLANT

Vs

Sidh Nath Goel RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 359 ITR 481

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Advocate : Dhananjai Awasthi, for the Appellant; Ashish Bansal and S.K. Garg, for the Respondent

Judgement

1. We have heard Shri Dhananjai Awasthi, learned counsel appearing for the Department. Shri Ashish Bansal appears for the respondent-assessee. This income tax appeal filed u/s 260A of the income tax Act, 1961, arises from an order of the income tax Appellate Tribunal, Lucknow Bench "B", Lucknow, dated November 7, 2008, for the assessment year 1992-93.

2. The appeal has been preferred by the Department on substantial question of law as follows:

1. Whether, on the facts and in the circumstances of the case, the hon''ble Tribunal was justified in law in deleting the penalty of Rs. 5,00,000 imposed by the Assessing Officer u/s 271(1)(c) of the Act and confirmed by the learned Commissioner of income tax (Appeals)-II, Kanpur, without appreciating that the surrender made on account of undisclosed income for the assessment year 1992-93 during the course of search and seizure operation conducted on October 17, 1994, was made much after the due date of filing of the return of income u/s 139(1) of the Act as well as after completion of the original assessment proceedings u/s 143(3) of the Act on March 24, 1994, and, therefore, the act of concealment was completed for failure not to disclose the said undisclosed income either in his original return of income or at the time of assessment

proceedings u/s 143(3) of the Act and penalty is leviable in terms of Explanation 5 to section 271(1)(c) of the Act.

3. In the proceedings u/s 271(1)(c) of the Act the income tax Officer levied penalty on the ground that the assessee had concealed the particulars of income and furnished the inaccurate particulars of his income of Rs. 5,39,300 as unexplained investment on renovation of house, and Rs. 82,000 as unexplained income from pawning business.

4. The Commissioner of income tax (Appeals) upheld the order on the reasoning given as follows:

5. The learned counsel for the appellant has argued before me that since it is the first default of the appellant, minimum penalty should be levied. From the perusal of statement it is clear that the appellant has been concealing his income year after year particularly with regard to the investment in pawning business. The same is true about the investment in renovation of house. A sum of Rs. 5,39,300 would not have generated in one single year, it is also the part of income which has been concealed with a design. The Department had to resort to ultimate action in its armoury, i.e., resorted to the search and seizure operation. The appellant has been caught squarely, he deserves no leniency.

In the result the appeal is dismissed.

5. The income tax Appellate Tribunal found that the assessee, during the course of search, gave a statement accepting Rs. 5,39,300 as undisclosed income of the financial year 1991-92 and accepted to pay tax on the same. Paragraph and relevant paragraph 6.1 are quoted:

6. We have considered the submissions of both the parries and carefully gone through the materials available on record. In the instant case, it is not in dispute that the statement of the assessee was recorded during the course of search and in the said statement the assessee surrendered the amount which is clear from the answer to question No. 10 which the learned Commissioner of income tax (Appeals) has reproduced at page 2 of the impugned order. The said question and answer read as under:

Question No. 10: In reply to question No. 7, you have told that the investment is out of business income and now you are saying that the same is out of yourself and your family''s savings. Please clarify the same,

Answer: I accept Rs. 5,39,300 as undisclosed income of the financial year 1991-92 and I am ready to pay tax, etc., on the same.

6.1. From the above, it is crystal clear that the assessee accepted the discrepancy and surrendered the amount in the statement recorded during the course of search. He was also ready to pay the taxes on those amounts. Therefore, it cannot be said that the surrender was not made during the course of search.

6. The income tax Appellate Tribunal relied upon the judgments of the Madras High Court in The Commissioner of Income Tax Vs. Shri. S.D.V. Chandru, , the Rajasthan High Court in Commissioner of Income Tax-1 Vs. Mishrimal Soni, and the Gujarat High Court in Commissioner of Income Tax Vs. Mahendra C. Shah, , which have explained the extent and scope of Explanation 5 to section 271(1)(c) of the Act, which deals with a situation in which any assets are found to be in the ownership of the assessee in the course of search u/s 132 of the Act. Clause (2) of Explanation 5 makes it clear that where in the course of search the assessee makes a statement u/s 132(4) and owns that he acquired any of such assets out of his undisclosed income, not so far returned, and further states the manner in which such income has been derived and pays tax together with interest if any in respect of such income, no presumption of concealment has to be drawn, notwithstanding the admission to that effect. In other words, to the extent the assessee makes a clean breast of his undisclosed income represented by assets found to be in the possession of the assessee he is not deemed to have concealed his income or concealed the particulars thereof. The explanation is not confined to physical possession but extends to other forms of possession.

7. In the present case, a note book was found in which details of expenses of renovation of residence were written. The assessee stated that he had made the expenditure out of business income but had not noted in his books of account. As per note book, the total came to Rs. 5,39,300 which the assessee, in respect to question No. 1, admitted to be undisclosed income of the financial year 1991-92 and on which he was ready to pay the tax. It is admitted that the statement was made during the course of search and the assessee was ready to make payment of tax. No further detail was required nor any further explanation was required to be given as to how and in what manner and in which year or years the undisclosed income was earned and as to why the tax was not paid on such undisclosed income.

8. We find that question of law is covered by the judgments of the Madras High Court, the Rajasthan High Court and the Gujarat High Court as quoted above with which we respectfully agree. The question of law is thus decided in favour of the assessee and against the Revenue. The income tax appeal is dismissed.

