(2010) 04 KAR CK 0003

In the Karnataka High Court

Case No : T.A. No. 2967 of 2005

Commissioner of Income Tax and Another — APPELLANT

Vs

Krishnamurthy — RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:
Income Tax Act, 1961 — Section 133 A, 271 (1) (c)

Citation : (2010) 04 KAR CK 0003

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : K.V. Aravind and M.V. Seshachala, for the Appellant; S. Parthasarathi, for Mallaha Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. The revenue has preferred this appeal by challenging the order dated 31-3-2005 passed in ITA No. 3480/Bang/2004 by raising the following substantial questions of law:

1. Whether the Tribunal was correct in holding that there was no concealment of particulars of income or furnishing inaccurate particulars without taking into consideration the fact that in the survey conducted u/s 133A on 23-6-2000 value of stock worth Rs. 5,10,000 was not reflected in the books maintained by the Assessee and the subsequent return filed on 29-1-2001 also did not reflect this amount of Rs. 5,10,000 resulting in recording of perverse finding for not taking into consideration material facts.

2. Whether the Tribunal was correct in holding that on detection in survey the Assessees father offering the difference in stock as income and thereafter the Assessee offering the difference in stock not declared in the return as the income of the assess during assessment proceeding would amount to a voluntary act which would not amount to concealment of income.

3. Whether the assessing officer had correctly levied penalty on the concealed

income and inaccurate particulars furnished by correctly rejecting the explanation offered by the Assessee as it lacked bona fides which had been confirmed by the first appellate authority.

2. The facts leading the filing of this appeal are that a survey was conducted on the premises of the Assessee on 23-6-2000 and during the course of which the books of the Assessee were verified with the physical stock and it was found that the stock worth Rs. 5,10,000 was in excess. The Assessee agreed to declare the same for the assessment year 2001-02 and he filed a return of income. However, in the return of income the Assessee had not declared the value of stock fund in the survey. Thereafter the Assessee by a letter dated 20-8-2003 offered this amount for taxation and the assessing officer added the difference of stock as part of the income and completed the assessment. Thereafter notice u/s 271(1)(c) of the Act was issued to the Assessee as to why penalty should not be levied, in response to which the Assessee stated that he had voluntarily offered the said amount for tax and therefore, penalty could not be levied. However, the said explanation was not accepted by the Assessing officer who held that there was concealment of income and return contained inaccurate particulars and by order dated 31-3-2004 proceeded to levy penalty on the Assessee.

3. Being aggrieved by the said order an appeal was preferred before the Appellate Commissioner by the Assessee which was also rejected by order dated 9-9-2004. Further appeal was filed before the Income Tax Appellate Tribunal which held that the discrepancy had been accepted by the Assessees father and the same was also offered for tax as income and therefore, there was no concealment of particulars of income for furnishing of inaccurate particulars. Accordingly it dropped the penalty proceedings. The said order is challenged in this appeal.

4. We have heard the learned Counsel on both sides and perused the material on record.

5. It is not in dispute that a discrepancy was found between the books of accounts and the actual physical verification during the survey on 23-6-2000 to an extent of Rs. 5,10,000. However, the fact remains the said amount was offered for tax and that the Assessee had also given an explanation that he had no wilful intention to conceal this income. According to him his late father was handling all the accounts and also was maintaining the books of accounts and that when the discrepancy was found, he voluntarily offered the said amount for tax. He has also stated that his father had accepted the said discrepancy and he bona fide believed that the additional income offered was included in the return of income filed by him and that the same was done voluntarily as an additional sum.

6. From the said explanation it becomes apparent that the statement of the father of the Assessee was recorded with regard to there being excess stock to an extent of Rs. 5,10,000 and though the said amount was initially not included

in the return, subsequently the Assessee has confirmed and endorsed the said figure and offered and amount for tax. Under the circumstances it cannot be held that there was non-disclosure of income or there was concealment of the particulars of his income with an intention not to offer the same for tax. We find that the Tribunal was justified in holding that since there was no attempt to conceal the said income, the initiation of penalty proceedings was not just and proper. Accordingly, we find that the deletion of the said penalty is correct on the facts of this case. Therefore, we answer the substantial questions of law against the revenue.

7. Accordingly, the appeal is dismissed.

