(2008) 07 AHC CK 0015

In the Allahabad High Court

Commissioner of Income Tax and Another — APPELLANT

Vs

Pramod Kumar Shukla — RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:
Income Tax Act, 1961 — Section 260a, 271(1)(c)

Citation : (2009) 312 ITR 223

Hon'ble Judges : Rakesh Sharma, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In the present appeal filed u/s 260A of the Income Tax Act, 1961, hereinafter referred to as "the Act"), the Revenue has raised the following questions said to be substantial questions of law, which arise out of the order of the Income Tax Appellate Tribunal, Allahabad, dated September 10, 2002.

1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that there was difference of opinion between the assessee and the Department that grant-in-aid is a capital in nature and not taxable ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the assessee has not concealed the particulars of its income or has furnished inaccurate particulars of such income ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in cancelling the penalty levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 ?

2. The respondent-assessee is carrying on the business of exhibition of cinema films. It filed return of income declaring a loss of Rs. 4,54,440. The Assessing Officer found that the assessee had received grants-in-aid in the form of entertainment tax rebate amounting to Rs. 5,11,127 which should be treated as revenue receipt which was accordingly added to income of the assessee. The

total income thus determined was at Rs. 56,690. The penalty proceeding u/s 271(1)(c) of the Act was initiated and the assessing Officer imposed a penalty of Rs. 2,62,000. The penalty was deleted by the Commissioner of Income Tax (Appeals), which order has been upheld by the Tribunal, on the ground that the assessee was under the impression that the grant-in-aid in the form of entertainment tax rebate was not taxable and, therefore, the same was not declared as income.

3. We have heard Sri A. N. Mahajan, learned standing counsel for the Revenue and Sri S.K. Garg, learned Counsel appearing for the respondent-assessee.

4. We find that this Court in the case of Kalpana Palace Vs. Commissioner of Income Tax, , has held that the grant-in-aid received from the State Government by the cinema owners is capital receipt. That being the position, the assessee had rightly not included in its income the grant-in-aid. Consequently, no penalty is exigible. The order of the Tribunal does not give rise to any substantial question of law.

The appeal lacks merit and is dismissed in limine.