
(2011) 07 KAR CK 0098
In the Karnataka High Court
Case No : IT Appeal No. 24 of 2006

Commissioner of Income Tax and Another	APPELLANT
Vs	
SLN Traders	RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Income Tax Act, 1961 — Section 143 (2), 143 (3), 271 (1) (c), 271 (1) (e)

Citation : (2011) 243 CTR 407

Hon'ble Judges : V.G. Sabhahit, J;Ravi Malimath, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; S. Nitya for K.R. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal filed against the order passed by the Tribunal in ITA No. 461/Bang/2002 dt. 13th July, 2005, is admitted on 22nd Jan., 2007 for consideration of the substantial questions of law framed in the memorandum of appeal which read as follows :

1. Whether the appellate authorities were correct in holding that during scrutiny assessment when the AO found that the advances received by the assessee of a sum of Rs. 14,00,000 could not be established as belonging to third parties and therefore, had been treated as the income of the assessee and consequently, penalty under s. 271(1)(e) of the Act had been correctly levied for furnishing inaccurate particulars and suppression of income ?

2. Whether the appellate authorities were correct in holding that no substantial explanation that the cash credit did not belong to third parties would not amount to false declaration as contemplated under Explan. 1 to s. 271(1)(c) of the Act and therefore, no penalty could be levied ?.

2. The material facts leading up to this appeal and necessary for consideration of abovesaid substantial questions of law are as follows :

The assessee is an excise contractor and filed his return of income for the asst. yr. 1997-98 admitting an income of Rs. 6,68,050 on 31st Oct., 1997. The return was taken up for scrutiny by issue of notice under s. 143(2) dt. 5th Oct., 1998. Notice under s. 142(1) was also issued calling for books of accounts etc. The assessment was completed under s. 143(3) on 21st March, 2000 on an income of Rs. 20,68,050 adding unproved credits in the assessee's books of account to the tune of Rs. 14 lakhs. During the assessment proceedings penalty proceedings under s. 271(1)(c) were initiated for concealing income and furnishing of false/inaccurate particulars.

3. In response to the notice, the assessee appeared and offered explanation submitting that the assessee has accepted the order adding the undisclosed credit as assessee could not produce the creditors though confirmation letter had been filed and there was no lack of bona fides on the part of the assessee. Wherefore, in view of the Expln. 1(d) to s. 271 of the IT Act (hereinafter called as "Act" for short) may be accepted and penalty proceedings be dropped.

4. The AO and the Dy. CIT, Circle-6(1) Bangalore, rejected the explanation and held that the assessee is liable to pay penalty which works out to Rs. 6,00,000 under s. 271(1)(c) of the Act. Being aggrieved by the same the assessee preferred appeal before the first appellate authority in IT Appeal No. 13/CC-1/CIT(A)-VI/2000-01 and the appellate authority by order dt. 22nd Jan., 2002 held that the explanation offered by the assessee that the assessee had conceded for inclusion of the additional income as assessee was unable to secure the creditor though confirmation of the credit had been filed in respect of the said persons and accordingly, deleted the penalty imposed under s. 271(1)(c). Being aggrieved by the same Revenue preferred appeal before the Tribunal in ITA No. 461/Bang/2002 (asst. yr. 1997-98). The Tribunal after considering the material on record concurred with the order passed by the appellate authority and held that as per Expln. 1 to s. 271(1)(c) of the Act deletion of the penalty by the appellate authority was justified and accordingly dismissed the appeal filed by the Revenue.

5. We have heard the Learned Counsel appearing for the appellants and the Learned Counsel appearing for the respondent.

6. The Learned Counsel appearing for the appellants submitted that in view of Expln. 1 to s. 271(1)(c) once it is found that a false statement was made in the return without showing the credit and the explanation in respect of the undisclosed credit which was found to be false, which has been accepted by the assessee and further denial of the explanation offered by the assessee, would not in any way absolve the assessee of liability to pay penalty in view of Expln. (1)(d) of s. 271 of the Act.

7. The Learned Counsel has relied upon the decision in the case of Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi, and the subsequent judgment in M/s. K.P. Madhusudhanan Vs.

Commissioner of Income Tax, Cochin, wherein the Supreme Court has held that Revenue was required to prove the mens rea of a quasi-criminal offence. That finding given in Shadi Lal Sugar & General Mills Ltd.'s case (supra) that Revenue was required to prove the mens rea of a quasi-criminal offence. But it was because of the view taken in this and other judgments that the Explanation to s. 271 was added. By reason of the addition of that Explanation, the view taken in this case can no longer be said to be applicable.

8. Learned Counsel appearing for the respondent submitted that in view of the fact that Expln. 1(d) to s. 271 of the Act has been substituted w.e.f. 1st April, 2006, mere fact that in the proceedings undisclosed credit has been added by rejecting the explanation in view of the concession given by the assessee as assessee could not secure the presence of the creditor though confirmation letter of the creditor had been given, would still constitute sufficient cause as both proceedings are quasi proceedings and the finding given in the assessment order, cannot be binding in respect of the explanation to be offered under s. 271(1)(c) of the Act. In support of her contention she has relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P) Ltd. (2010) 230 CTR (SC) 320 : (2010) 36 DTR (SC) 449 : (2010) 322 ITR 158 (SC) wherein it is held as follows :

Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under s. 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the AO for any reason, the assessee will invite penalty under s. 271(1)(c). That is clearly not the intendment of the legislature.

9. We have given careful consideration to the contention of the Learned Counsel appearing for the parties in the light of the principle laid down by the Hon'ble Supreme Court in Reliance Petroproducts (P) Ltd.'s case (supra) referred to by the Learned Counsel appearing for the respondent and scrutinised the material on record.

10. The material on record would clearly show that assessee had accepted undisclosed credit. However, the assessee could not secure the presence of the creditor though confirmation letter had been filed. In any view of the matter, in the light of the principle laid down by the Hon'ble Supreme Court, the explanation offered in the penalty proceedings has to be taken into account and the reasons assigned for not accepting the explanation or that the assessee had failed to explain and conceded the undisclosed income in the assessment proceedings, would be a ground for imposing penalty under s. 271(1)(c) of the Act. In view of the provisions of Expln. 1(d) to s. 271 of the Act. it is clear that if satisfactory explanation is offered, it is always open for the AO to refrain from imposing any penalty under the said section. In the present case, having regard to the fact that assessee had conceded for accepting the order of the AO which was based upon the submission made by the assessee since he could not secure

the creditor, he conceded for addition of the undisclosed credit and also the explanation that there was no intention to avoid payment of tax which has been accepted concurrently by the Tribunal and the appellate authority.

11. However, in respect of the earlier assessment orders for the asst. yr. 1996-97 though an order for addition of undisclosed income was passed, no proceedings were initiated for imposition of penalty and the said order of the AO has been upheld in IT Appeal No. 954 of 2006. Accordingly, we hold that the concurrent finding arrived at by the appellate authority and the Tribunal, is justified and does not suffer from perversity or arbitrariness as to call for interference in this appeal. Accordingly, we answer the substantial questions of law against the Revenue and in favour of the assessee and pass the following order:

12. Appeal is dismissed as devoid of merit.