(2008) 04 P&H CK 0138

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

Amar Nath — RESPONDENT

Date of Decision : 11-04-2008

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

Citation : (2008) 04 P&H CK 0138

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The revenue has filed the present appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Income Tax Act") against the order dated 5-4-2007 passed by the Income Tax Appellate Tribunal, Chandigarh, Bench-''B'' (hereinafter called ''the Tribunal'') in IT.A. No. 592/ Chandi./2006 for the assessment year 2004-05, raising the following substantial question of law:

Whether on the facts and in the circumstances of the case, the learned Income Tax Apellate Tribunal wasright in upholding the order of the Commissioner (Appeals), against imposition of penalty u/s 271(1)(c).of the Income Tax Act, 1961, without deliberating upon,discussing and analysing the reasons, as spelt out and discussed in para 4 ofthe penalty order and relying on the after thought considered by the learned Commissioner (Appeals), while deleting die penalty imposed u/s 271 (1)(c) of the Income Tax Act.

2. The return declaring an income of Rs. 16,720 was filed by the assessee on 31-10-2004, which was processed u/s 143(1) of the Income Tax Act. The case was picked up for scrutiny and it was found that the assessee had claimed profit on sale of shares, which was purchased by him on 6-9-2002, for exemption u/s 10(36) of the Income Tax Act. The assessee was asked to explain why he claimed profit exempted u/s 10(36) of the Income Tax Act when he had

purchased shares before 1 -3-2003. In the reply filed by the assessee, it was stated that he was under the bona fide belief that profit on the sale of these shares was exempt u/s 10(36) of the Income Tax Act and nothing in this regard has been concealed by him and this bona fide belief was based on the advice of his counsel. However, the assessing officer did not accept the contention of the assessee and held that a wrong claim was made by the assessee by furnishing inaccurate particulars of his income as the profit on sale of snares was not exempt u/s 10(36) of the Income Tax Act. Vide order dated 29-7-2005 additions were made on this account and penalty proceedings were initiated separately against the assessee. A penalty of Rs. 3,10,716 was imposed upon the assessee, u/s 271(1)(c) of the Income Tax Act, by Assistant Commissioner, Kurukshetra (hereinafter referred to as ''Commissioner (Appeals)''), vide order dated 30-1-2006.

3. Aggrieved against the said order, assessee filed an appeal before the Commissioner (Appeals), Karnal, who vide its order dated 25-5-2006, partly allowed the appeal and reduced the penalty to Rs. 2,87,133.

4. Not feeling satisfied with the order of Commissioner (Appeals), the revenue filed an appeal before the Tribunal on the ground that the assessee had wrongly claimed exemption u/s 10(36) of the Income Tax Act as the said provisions were not applicable to the facts of the assessee''s case and therefore, he had concealed his income by furnishing inaccurate particulars and therefore, the assessee is liable for imposition of penalty. The Tribunal, vide its order dated 30-3-2007 dismissed the appeal of the revenue-department.

5. Still dissatisfied with the order of Tribunal, the revenue has filed the present appeal.

6. We have heard learned Counsel for the appellant-revenue and perused the record.

7. In the present appeal, it is noticed that the assessee had claimed wrong deduction on the advice of his Counsel and in this regard, an affidavit of Counsel for the assessee was also filed before the Commissioner (Appeals). The then Counsel of the assessee had categorically admitted that he had advised the assessee to claim deduction u/s 10(36) of the Income Tax Act in respect of the shares sold during the financial year 2003-04. However the revenue has not rebutted the said affidavit at any stage. Thus, the assessee acted upon the advice of his counsel. In the case of Manoj Ahuja and Another Vs. Inspecting Assistant Commissioner of Income Tax, Acquisition Range, wherein this court has held that no litigant should ordinarily suffer for the mistake of his counsel. It is also to be noticed that since the assessee had furnished all the details relating to the capital gains along with return of income, so it cannot be said that the assessee had concealed anything from the revenue. Therefore, this may be a good case for making addition against the assessee since he had made a wrong claim. However, this addition in itself is not sufficient for levying the penalty u/s

271(1)(c) of the Income Tax Act. In view of the fact that the assessee had claimed the said deduction under a bona fide belief that he is entitled to the said deduction on the basis of legal advice given by his Counsel and that he had furnished all the details relating to the capital gains along with return of income, it cannot be held that there was any mala fide intention of the assessee to conceal the income.

8. Considering the totality of the case and in the light of the above discussion, we are of the view that there is no error in the impugned order of the Tribunal. No question of law is arising for determination of this Court in this appeal and the same is hereby dismissed.

