
(2013) 02 P&H CK 0146
In the Punjab And Haryana At Chandigarh
Case No : Income Tax A. No. 38 of 2010

Commissioner of Income Tax

APPELLANT

Vs

Amtek Auto Ltd.

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Income Tax Act, 1961 — Section 115JAA, 115JB, 260A, 271(1)(c)

Citation : (2013) 352 ITR 394

Hon'ble Judges : Ritu Bahri, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Tajinder K. Joshi, for the Appellant; Rakesh Gupta and S.K. Mukhi, for the Respondent

Judgement

Hemant Gupta, J.—The Revenue is in appeal u/s 260A of the income tax Act, 1961, arising out of an order passed by the income tax Appellate Tribunal, Delhi Bench "A", New Delhi (for short "the Tribunal") on March 31, 2009, arising out of an assessment year 2001-02 whereby the penalty proceedings initiated against the assessee u/s 271(1)(c) of the income tax Act, 1961, were set aside. The Assessing Officer levied penalty u/s 271(1)(c) in respect of additions made on account of loss on the sale of fixed asset, loss on sale of shares and expenses paid towards placement of preference shares. The Tribunal, while accepting the appeal, found that such additions made by the Assessing Officer are based upon the difference of opinion whether such additions are to be treated as revenue expenditure or a capital expenditure and not because the assessee has made a false claim. It was also found that even after the additions are made, there is no change in the amount of tax payable by the assessee as the ultimate return of the assessee remains less than the amount assessable u/s 115JB of the Act.

2. The Revenue has claimed the following substantial questions of law:

(i) Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was right in law in deleting the penalty of Rs. 11,18,881 levied by the Assessing Officer u/s 271(1)(c) of the income tax Act,

1961, and confirmed by the learned Commissioner of income tax (Appeals) even though the conditions laid down under the provisions of section 271(1)(c) are satisfied in the assessee's case?

(ii) Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was right in law in deleting the penalty of Rs. 11,18,881 levied by the Assessing Officer u/s 271(1)(c) of the income tax Act, 1961, disregarding the fact that even if the assessee has paid higher taxes under the provisions of section 115JB of the Act, 1961, it is allowed to carry forward and set off the tax credit in subsequent year in accordance with the provisions of section 115JAA of the income tax Act, 1961?

(iii) Whether the learned income tax Appellate Tribunal was justified in deleting the penalty of Rs. 11,18,881 levied by the Assessing Officer u/s 271(1)(c) of the income tax Act, 1961, in the light of the apex court's decision in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, wherein it is held that the object behind the enactment of section 271(1)(c) read with the Explanation indicates that the section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability and willful concealment is not an essential ingredient for attracting civil liability?

3. After hearing learned counsel for the parties, we do not find that any substantial question of law arises for consideration.

4. The assessee has disclosed the nature of transactions in its return. It was on the basis of the interpretation of the provisions of the statute, the Assessing Officer found that such expenditure claimed by the assessee is not the revenue expenditure but the capital expenses. There is a fine distinction as to when an expenditure can be treated as a revenue or a capital expenditure. Therefore, merely for the reason that the assessee has claimed the expenditure to be revenue will not render the assessee liable to penalty proceedings. The order passed by the Tribunal does not give rise to the questions of law sought by the Revenue. Consequently, we do not find any merit in the present appeal and the same is dismissed.