(2010) 09 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 36 and 2004

Commissioner of Income Tax — APPELLANT

Vs

Ashok Kumar — RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:
Income Tax Act, 1961 — Section 132, 132(4), 234A, 234B, 234C

Citation : (2011) 334 ITR 355 : (2012) 209 TAXMAN 143

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—The appeal was admitted by this Court vide order dated September 9, 2004, for determination of the following substantial question of law:

Whether the amount seized at the time of search u/s 132 can be adjusted towards the advance tax liability of the year during which search had been conducted ?

2. Briefly the facts necessary for deciding the appeal as culled out from the record are that a search was conducted at the business premises of the Assessee on July 27, 1989. During the course of search, cash amount of Rs. 6,20,580 was found out of which Rs. 5,90,000 was seized. The Assessee surrendered a sum of Rs. 5,75,000 in his statement recorded u/s 132(4) of the Act as income for the assessment year in question. The asses-see filed its return on March 5, 1992 declaring an income of Rs. 5,72,370. The Assessee vide letters dated August 28, 1989 and September 12, 1989, requested that the advance tax payable in respect of the assessment year under consideration amounting to Rs. 3,14,213 may be adjusted out of cash seized and he may not be held liable for interest under Sections 234B and 234C. The Assessee did not receive any response that the aforesaid applications had been rejected. However, in the assessment order,

interest amounting to Rs. 1,04,412 and Rs. 1,47,024 under Sections 234A and 234B was charged. Being aggrieved, the Assessee filed appeal against deduction made and also charging of interest under Sections 234A and 234B before the Commissioner of income tax (Appeals) (in short "the CIT(A)") who vide order dated January 5, 1996, deleted the interest charged under Sections 234A and 234B of the Act. Feeling dissatisfied, the Department took the matter in appeal and the Tribunal vide order dated July 23, 2003 dismissed the appeal which gave rise to the Revenue to approach this Court by way of instant appeal.

3. We have heard learned Counsel for the parties.

4. It is not in dispute that the Assessee had made a request vide letter dated August 28, 1989 and reminder dated September 12, 1989 for adjustment out of the seized amount towards advance tax liability in respect of the assessment year in question, i.e., 1990-91.

5. In CIT v. Arun Kapoor-I.T.A. No. 149 of 2003, decided on July 22, 2010, [2011] 334 ITR 351 (P&H), this Court had occasion to consider a similar issue where it has been held that the Assessee is entitled to adjustment of seized amount towards advance tax liability from the date of making the application in that regard. In the present case, the Assessee had made request for adjustment of the advance tax liability of Rs. 3,14,312 against the seized amount of Rs. 5,90,000 on August 28, 1989. Since the first instalment of advance tax was payable on September 15, 1989 and the request for adjustment having been made on August 28, 1989 and reminder on September 12, 1989, no interest was exigible under Sections 234A and 234B of the Act. The Tribunal has rightly held that the Assessee was entitled to adjustment of the said amount and no interest could be charged on that basis. Therefore, no fault could be found with the approach adopted by the Tribunal.

6. Accordingly, the substantial question of law is answered in favour of the Assessee and against the Revenue.

7. Consequently, the appeal is dismissed.