
(2008) 08 P&H CK 0121
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Avon Cycles Ltd.

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2009) 309 ITR 247 : (2008) 152 PLR 433 : (2009) 5 RCR(Civil)
163 : (2009) 177 TAXMAN 33

Hon'ble Judges : Rajesh Bindal, J; Hemant Gupta, J

Bench : Division Bench

Judgement

Rajesh Bindal, J.—The Revenue has filed the present appeal u/s 260A of the Income Tax Act, 1961 (for short, "the Act") raising the following substantial question of law, arising out of the order passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (for short, The Tribunal") in I.T.A. No. 211/Chandi/2005 dated 16.4.2007 for the assessment year 1999-2000;

Whether on the facts and in the circumstances of the case. The Tribunal was right in law to dismiss the appeal of departmental for non prosecution instead of deciding the same on merits irrespective of the fact same issue stands decided in favour of the department by the jurisdictional High Court.

2. Learned Counsel for the Revenue submitted that on the date fixed before the Tribunal, departmental representative who had been allotted the case could not appear for certain unavoidable reasons and other departmental representative who was present requested for an adjournment, which was rejected by the Tribunal and the appeal was dismissed in default. He further submitted that even an application filed by the assessee for adjournment was dismissed, though as far as the department is concerned, the Tribunal recorded that no application for adjournment had been filed. He further submitted that the issue raised by the Revenue in appeal before the Tribunal is an important question which has already been decided in favour of the Revenue by this Court and in case, the appeal is not heard on merits by the Tribunal, the same will result in miscarriage of justice.

On the other hand, learned Counsel for the respondent submitted that it was for the department to pursue the appeal filed by it and in case of negligence and non-appearance at the time when the case was called for hearing, the Tribunal had no choice but to dismiss the same in default.

3. Having heard learned Counsel for the parties and without opining on the merits of the controversy involved therein, in our considered view, it would be in the fitness of things and interest of justice that the appeal filed by the Revenue before the Tribunal is heard and decided on merits. A perusal of the impugned order shows that on the date fixed none was present for the parties before the Tribunal, though it is recorded that there was no written request on behalf of the Revenue before the Tribunal, whereas a similar written application filed by the assessee for adjournment was rejected. It is also found recorded in the order that other departmental representative present in the Court requested for an adjournment on the ground that the case had been allotted to another departmental representative. However, the same was rejected.

4. Considering the material on record, we find that the approach of the Tribunal, in the case in hand, was not justice-oriented. Once both the parties were requesting for adjournment and met too in the absence of their respective counsel, the Tribunal could very well consider their request or proceed to decide the case on merits instead of dismissing the same in default. The technicalities should take a back seat as far as determination of rights of the parties is concerned. The parties should be afforded opportunity to address arguments on merits instead of dismissing the case in default.

5. For the reasons stated above, the impugned order passed by the Tribunal is set aside. The parties are directed to appear before the Tribunal on 20.10.2008 for further proceedings.