(2000) 09 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Income Tax C. No. 44 of 1999

Commissioner of Income Tax APPELLANT

Vs

Dhillon Rice Mills RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 271(1)

Citation : (2002) 256 ITR 447

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant;

Final Decision : Dismissed

Judgement

G. S. Singhvi, J.—In this petition filed u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), the petitioner has prayed for directing the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, "the Tribunal"), to refer the following question of law for the opinion of this court: "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income Tax (Appeals) deleting the penalty levied u/s 271(l)(c) of the Act ?"

2. The assessee is running a rice sheller. For the assessment year 1988-89, it filed a return of income declaring a net loss of Rs. 26,566. The Assessing Officer did not accept the return and made the assessment by making addition of Rs. 2,85,253. He also initiated penalty proceedings u/s 271(l)(c) of the Act and imposed penalty of Rs. 90,000. The appeal filed against the order of assessment was partly allowed by the Commissioner of Income Tax (Appeals), Bhatinda (for short, "the CIT (Appeals)"), who deleted the additions to the tune of Rs. 81,254. The appeal filed by the assessee against the order of penalty was accepted by the Commissioner of Income Tax (Appeals) with the observation that the Department has failed to prove positive act of concealment on the part of the assessee. The Tribunal has upheld the appellate order with the following

observations :

"After considering all the submissions, we are in agreement with the submissions of learned counsel for the assessee which has rightly been appreciated by the learned Commissioner of Income Tax (Appeals) who has reproduced the ratio of the jurisdictional High Court in para. 5 of his order. The Punjab and Haryana High Court in the case of Commissioner of Income Tax Vs. Metal Products of India, has observed that the addition if made on estimate under the proviso of Section 145(1) by adopting the view that gross profit shown in the books of account was too low, then that does not automatically lead to the conclusion that there was failure to return the correct income by means of fraud or gross or wilful neglect. The learned Commissioner of Income Tax (Appeals) has rightly concluded that the burden was on the Department to prove that there was positive act of concealment. In the case in hand, the Assessing Officer simply estimated the yield of super phak as well as of chhilka and estimated the price of chhilka and made the addition but that estimate will not lead to penalty ipso facto and the Commissioner of Income Tax (Appeals) in view of the decision of the High Court''s dictum rightly decided the appeal in favour of the assessee and we do not find any force in the appeals of the Revenue and the same are dismissed."

3. After hearing learned counsel for the Revenue and perusing the record, we are satisfied that the view taken by the Commissioner of Income Tax (Appeals) and the Tribunal that the Department has failed to prove the concealment of income by the assessee does not suffer from any legal error and no referable question of law arises in this case.

Hence, the petition is dismissed.

