(2005) 04 AHC CK 0033

In the Allahabad High Court

Case No : IT Reference No. 68 of 1995

Commissioner of Income Tax — APPELLANT

Vs

Dilbagh Shah and Sons — RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:
Income Tax Act, 1961 — Section 139, 256, 271B, 44AB

Citation : (2007) 160 TAXMAN 209

Hon'ble Judges : R.K. Agarwal, J;Prakash Krishna, J

Bench : Division Bench

Judgement

1. The ITAT, Delhi, has referred the following question u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'') for opinion to this Court:

Whether, in view of the facts and circumstances of the case, the Hon''ble Income Tax Appellate Tribunal was legally correct in confirming the order of the learned Commissioner (Appeals) who cancelled the penalty of Rs. 99,520 imposed u/s 271B

The matter relates to the assessment year 1990-91.

2. The present reference arises out of penalty proceeding u/s 271B of the Act. The respondent-assessee filed return of income along with audit report on 30-1-1991. The return was filed beyond the time prescribed by sub-section (1) of'' section 139 of the Act. In reply to the show-cause notice it was stated that the respondent-assessee was obliged to get its account audited on or before 31-10-1990, which in fact, they did. The audit report was obtained within prescribed date, i.e., before 31-10-1990. It is dated 30-10-1990. The Income Tax Officer levied penalty u/s 271B of the Act, which was set aside in appeal by the CIT (Appeals). The said order has been confirmed by the Tribunal.

3. Heard learned standing counsel for the department. We find that the controversy stands. concluded by decisions of a Division Bench of this court in the cases of Commissioner of Income Tax Vs. Gramin Sadhan, and Commissioner

of Income Tax Vs. Jai Durga Construction Co., . It has been held that u/s 44AB, as it stood during the assessment year under consideration, the assessee was required to get its account audited by the Accountant before the specified date. There was no obligation to furnish audit report before the assessing authority before the specified date. This obligation has been created by substituting the words "furnished by" for the words "obtained before" by the Finance Act, 1995 with effect from 1-7-1995. Thus, prior to the amendment obligation of the assessee to whom u/s 44AB applied was merely to get the account audited and get the audit report before the specified date. In the present case, there is no dispute that the assessee complied with these requirements. Therefore, we are of the opinion that in such circumstances no penalty u/s 271B can be levied on the respondent.

4. We accordingly answer the question referred to us, in affirmative, i.e., in favour of the assessee and against the revenue. There will be however no order as to costs.