(1998) 02 AHC CK 0127

In the Allahabad High Court

Case No : IT Application No. 100 of 1997

Commissioner of Income Tax APPELLANT

Vs

Dinesh Pharmaceuticals RESPONDENT

Date of Decision : 09-02-1998

Acts Referred:
Income Tax Act, 1961 — Section 133, 194A(1), 206, 206A, 206C

Citation : (1998) 100 TAXMAN 383

Hon'ble Judges : R.K. Gulati, J;M.C. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—This is an application under sub-section (2) of section 256 of the income tax Act, 1961 (?the Act?) filed at the instance of the Commissioner Meerut. The prayer in the application is that the order of the Tribunal does give rise to the following question which is of law and the Tribunal may be directed to draw up a statement of the case and refer the same for the opinion of this Court :

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in law to sustain the order of Commissioner (Appeals) cancelling the penalty u/s 272A(2)(c) of the income tax Act ?"

We have heard the learned counsel for the parties.

The application arises from the penalty proceedings u/s 272A(2)(c) of the Act in relation to the assessment year 1989-90 for failure of the assessee to furnish the return within the prescribed time in Form 27A as a result of which the assessee was subjected to a penalty of Rs. 71,500. The respondent-assessee is a registered firm engaged in the business of purchase and sale of medicines. The assessee-firm consisted of two partners?mother and son, namely, Smt. Sushila Devi and Sri D.G. Goel. During the previous year relevant to the assessment year under consideration the assessee credited certain amounts of interest in the accounts of the family members of the partners on their old brought forward balances. The amount of interest payable in each account was likely to exceed Rs. 2,500 during the year but the aggregate amount in each account was for below the taxable limit and the depositors having no other source of income, had furnished to the assessee statement in writing in the prescribed Form No. 15A before 31-3-1989. The assessee, therefore, did not deduct any tax at source at the time of crediting the amounts of interest to the respective accounts in accordance with the provisions of proviso to section 194A(1) of the Act. However, in terms of section 206 of the Act read with rule 3AA of the income tax Rules, 1962 the assessee was required to furnish the return in Form No. 27A within 30 days from 31-3-1989, and as no such return was furnished the concerned income tax Authority called upon the assessee to explain as to why the penalty u/s 272A(2)(c) be not imposed for its failure in furnishing the return in Form No. 27A within the prescribed limit. The concerned authority stated that no reply in response to the show-cause notice was filed and it proceeded to impose a penalty of Rs. 71,500 u/s 272A(2)(c) on the finding that the assessee had without reasonable cause failed to furnish the return in Form No. 27A within the prescribed time. The penalty was calculated taking the default period as 715 days.

2. The assessee preferred an appeal before the Commissioner (Appeals), Meerut where the penalty was let off. On further appeal by the revenue to the Tribunal the appellate order was upheld and the appeal filed by the revenue was dismissed. The application u/s 256(1) filed by the revenue having been rejected, the instant application has been filed.

3. Section 272A(2)(c) envisages that if any person fails to furnish in due time any of the returns, statements or particulars mentioned in section 133 or section 206 or section 206C or section 285B shall pay, by way of penalty, a sum which shall not be less than one hundred rupees, but which may extend to two hundred rupees, for every day during which the failure continues.

4. Sub-section (4) of section 272A directs that no order of penalty shall be passed by any income tax authority unless the person on whom the penalty is proposed, is given an opportunity of being heard in the matter by such authority. It follows that it is only after taking into consideration all the facts and circumstances and evidence that may be placed on record that the penalty may be imposed in appropriate cases.

5. Section 273B provide that notwithstanding anything contained inter alia, in the provisions of clause (c) of sub-section (2) of section 272A no penalty shall be imposable on the person or the assessee as the case may for any failure referred to in the said provision, if he proves that there was reasonable cause for the said failure. Thus under the provisions with which we are concerned, the penalty is leviable if the default is committed ?without reasonable cause?. In other words because of section 273B the penalty shall not be imposed in respect of a default relating to the provisions mentioned therein if the person or the assessee concerned can show that there was a reasonable cause for the default in

question.

6. Before proceeding further, it may be observed that the first appellate authority had noticed in its order that the assessee had in fact submitted its reply to the show-cause notice. It was pointed out that out of the two partners constituting the firm the main partner was D.C. Goel who was looking after the day-to-day affairs of business. On account of his busy schedule in the conduct of the business he depended on the advice of his counsel Shri R.K. Gupta to whom he had entrusted all his tax matter and was solely dependent upon his advice and guidance for performing and discharging the necessary legal obligations in tax matters. It was further pointed out that the assessee had been advised by his counsel to obtain declarations in the prescribed Form No. 15A from the family members/creditors and that advice was complied within time before close of the accounts. The assessee had never been advised or directed by his counsel regarding the obligation of filing Form No. 27A as required u/s 206A of the Act and the assessee was thus prevented from filing the said Form. It was only when the assessee was called upon to show cause why the penalty should not be levied for failure to comply with the provision of section 272A(2)(c), that assessee realised its obligation. It was also the case of the assessee that it was law abiding fully conscious of its legal obligations and had never been penalised for committing default in the past years ever since it had come into existence over a decade ago; that the account of the assessee had always been accepted in the past; that the interest in question was paid on old carried forward balances of the four creditors as in past who were close blood relations of the partners of the firm; that none of the said creditors had income exceeding the non-taxable limit; that the provision pertaining to the filing of Form No. 27A was introduced for the first time during the year in question and, therefore, the assesse was not aware of those provisions in the past. It was pleaded that non-filing of requisite Form No. 27A could not in any manner be attributed to the assessee with the object of defrauding the revenue and the default, if any, was on account of sufficient cause.

7. The case taken up by the assessee has been discussed thread bare by the Commissioner (Appeals) in his order and thereafter by the Tribunal. Both the authorities have concurrently found that the case set up by the assessee was correct in all respects and there was a sufficient cause for which the assessee could not make compliance of the relevant provisions for which it was subjected to penalty. It was held that the mistake lay more at the door of the counsel as it was quite apparent that he was unaware of the recent change introduced with effect from 1-4-1989 by the Direct Tax Laws (Amendment) Act, 1987. In accepting the explanation of the assessee and exonerating it from penalty, the appellate authority referred to the decision of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , where it is held that ?there is no presumption that every person knows law. It is often said that every one is presumed to know the law, but that is not a correct statement; there is no such maxim known to the law?.

8. The appellate authority further held relying upon several decisions which need not be cited in this order, that where a person engages a counsel, he would be justified in presuming that the counsel would attend to the work assigned to him and he cannot be made to suffer where the counsel fails to perform his duties or for the negligence of the counsel.

9. In Hindustan Steel Ltd. Vs. State of Orissa, the Supreme Court has observed that the penalty will not also be imposed merely because it is lawful to do so. Whether the penalty should be imposed for failure to perform statutory obligation, is a matter of discretion of the authority to exercise judicially and on consideration of all the relevant circumstances. Even if the minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is technical or venial breach of the provisions of the Act or where breach flows from a bona fide belief that the offender is not liable to act in a manner prescribed by the statute.

10. We may observe that for the purposes of this case it is not necessary to go into the question that mens rea is a necessary element or not, for a default u/s 272A(2)(c) read with section 273B of the Act. What is required is that the authority must be satisfied judicially as to whether or not the person charged with the default has failed to comply the provisions of the Act without sufficient cause. If the totality of the facts and circumstances disclose sufficient cause or reflect a bona fide belief on the part of the defaulter in the matter of the commission of default than a liberal attitude towards the assessee is necessary. The question whether there was a reasonable cause for which the requirement of relevant provisions could not be complied with, is primarily and essentially a question of fact to be decided in each case on consideration of material placed before the concerned authority. In the instant case, the explanation of the assessee having been accepted as sufficient, in our opinion, the order of the Tribunal is concluded by the findings of fact based on appreciation of evidence and the material that was placed before it. The learned standing counsel for the revenue could not point out to us any material which may go to show that the decision of the Tribunal was incorrect in any manner or it had left out of its consideration any material which existed on the record. In our opinion, the Tribunal was fully justified in upholding the order of the first appellate authority which deleted the penalty u/s 272A(2)(c). In any view of the matter we reject this application by saying that the order of the Tribunal does not give rise to any statable question of law, and the application is devoid of merit.