(2008) 09 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Dr. O.P. Miglani RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:
Income Tax Act, 1961 — Section 113, 158BC, 158BFA, 260A

Citation : (2009) 221 CTR 693

Hon'ble Judges : Ajay Tewari, J;Adarsh Kumar Goal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.

CM. No. 18192-CII of 2007

1. For the reasons mentioned in the application, delay of 12 days in refiling the appeal is condoned.

2. CM stands disposed of. FT Appeal No. 379 of 2007

3. This appeal has been filed u/s 260A of the IT Act (hereinafter referred to as ''the Act'') by the Revenue against the order dt. 29th Sept., 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench ''F'' New Delhi (hereinafter referred to as ''the Tribunal'') in IT(SS)A No. 349/Del/2002 for the block assessment period 1st April, 1990 to 17th Aug., 2000 proposing following substantial questions of law:

(i) Whether on the facts and circumstances of the case, the Tribunal was correct in law in confirming the order of the learned CIT(A) in partially deleting interest levied u/s 158BFA(1) of the IT Act, in respect of taxes paid upto the deemed due date of filing the block return ?

(ii) Whether on the facts and circumstances of the case, the Tribunal was correct in law in deleting the surcharge levied under proviso to Section 113 on the ground that search had taken place in the case of the assessee prior to the insertion of the proviso w.e.f. 1st June, 2002?

4.. Taking the second question first, we may notice that this Court in Civil Writ Petn. No. 2046 of 2005, Lalit Hosiery and Ors. v. Union of India and Ors. decided on 18th Oct., 2006 held as follows:

Having regard to the fact that in the Finance Act, 2000, a specific provision has been incorporated, merely because addition in the IT Act has been incorporated only w.e.f. 1st June, 2002, did not affect liability of the assessee to pay surcharge. It is not possible to accept that a provision in a Finance Act could not be given effect to unless the same was incorporated in the main IT Act.

5. In this view of the matter the second question is answered in favour of the Revenue.

6. As regards the first question, it is seen that a search was conducted on the premises of the assessee respondent on 17th Aug., 2000. Pursuant to this, notice u/s 158BC of the Act was served on the assessee on 29th Aug., 2000 whereby he was called upon to file the return of income within 30 days as per which the said return could be filed on or before 28th Sept., 2000. By letters dt. 1st Sept., 2000, 10th Sept., 2000, 22nd Sept.. 2000, 6th Oct., 2000 and 13th Oct., 2000 the assessee requested for copies of the seized documents, without the perusal of which return could not be filed, and also sought extension of time for filing a block return upto 13th Oct., 2000. Along with the application dt. 13th Oct., 2000 the assessee enclosed challans evidencing payment of Rs. 40 lacs. There was no communication from the AO as to whether extension of time sought for was granted or refused and, ultimately the return was filed on 13th Dec, 2000.

7. The entire assessment is not relevant for the purpose of this order since the only question which survives is with regard to the demand of interest for Rs. 5,70,366 on account of alleged delay in filing the return. In appeal the appellate authority set aside the demand for interest upto 13th Oct., 2000 on the ground that the return could be filed upto the said date. In further appeal the Tribunal held that interest was chargeable not on the entire tax on the undisclosed income but on the tax as reduced by the sum of Rs. 46.70 lacs paid by him upto 13th Oct., 2000 on the footing that this amount was paid by the assessee before the due date for filing the return.

8. In our opinion, this finding of the Tribunal is unexceptionable. In this regard reliance has been placed on the decision of the Bombay High Court in the case of Shanlal Shantilal and Bros. Vs. Union of India, as well as of this Court in the case of Harmanjit Trust Vs. Commissioner of Income Tax, and in COMMISSIONER OF Income Tax Vs. SURINDER KUMAR PARMOD KUMAR AND OTHERS., . In this view of the matter, question No. 1 cannot be held to be substantial question of law. Thus, this appeal is partly allowed. Question No. 2 is answered in favour of the Revenue while with regard to question No. 1, the appeal is dismissed.