(2006) 02 MP CK 0033

In the Madhya Pradesh High Court

Case No : IT Appeal No. 114 of 1999

Commissioner of Income Tax — APPELLANT

Vs

Dr. T.A. Qureshi — RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:
Income Tax Act, 1961 — Section 260A, 271(1)

Citation : (2006) 202 CTR 406 : (2007) 292 ITR 301 : (2006) 154 TAXMAN 419

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain and Veena Mandlik, for the Appellant; S.C. Bagadia and D.K. Chhabra, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is an appeal filed by the Revenue (CIT) u/s 260A of the Act against an order dt. 9th April, 1999 passed by Tribunal in ITA No. 562/Ind/1994.

2. The appeal was admitted for final hearing on 23rd March, 2000 by a Bench consisting of Hon''ble R.D, Vyas and Hon''ble Shambhoo Singh, JJ., without formulating the substantial question of law as required u/s 260A of the Act. Since the appeal is already admitted for final hearing and in our view rightly, we consider it proper and with the consent of parties comply the rigour of Section 260A ibid and formulate the substantial question of law which in our view does arise out of the impugned order passed by the Tribunal:

(1) Whether Tribunal was justified in setting aside of the penalty imposed by AO u/s 271(1)(c) ibid ?

(2) Whether in view of order passed by this Court in IT Appeal No. 33 of 1999, dt. 29th Nov., 2004 upholding the addition in assessment proceedings, a case for remand is made out for determining the quantum of penalty amount u/s 271(1)(c) ibid ?

3. Heard Shri R.L. Jain, learned senior counsel with Ku. Veena Mandlik, for the appellant and, Shri S.C. Bagadia, learned senior counsel with Shri D.K. Chhabra, for respondent.

4. Having heard learned counsel for the parties and having perused the record of the case, we are inclined to allow the appeal and remand the case to the Tribunal by answering the question No. 2 in favour of appellant.

5. In our opinion on admitted facts emerging from the record of this case and which came into existence during pendency of this appeal, a case for remand to the Tribunal is made out for deciding the appeal afresh only insofar as the issue of quantum of penalty to be imposed on the assessee u/s 271(1)(c) ibid is concerned. It is for the reason that this Court in an appeal arising out of the assessment proceedings in IT Appeal No. 33 of 1999 [reported as Commissioner of Income Tax Vs. Dr. T.A. Qureshi,] has upheld the addition which was deleted by the Tribunal. Since the impugned order of Tribunal was passed on the basis of the appellate order of Tribunal passed in his favour in assessment case and hence the moment the order of Tribunal was reversed by this Court in IT Appeal No. 33 of 1999, a case for consideration of imposition of penalty assumed significance. Indeed this legal position emerging from the case based on subsequent event which came into existence pending this appeal was not disputed.

6. We, therefore, allow this appeal and while setting aside of the impugned order remand the case to the Tribunal for deciding the appeal on merits i.e., how much penalty i.e., quantum should be imposed on the assessee u/s 271(1)(c) of the Act. Let this be done within three months as an outer limit. Parties to appear before the Tribunal on 20th March,. 2006.

No cost.