(2014) 07 AHC CK 0005

In the Allahabad High Court

Case No : Income Tax Appeal No. 62 of 2000

Commissioner of Income Tax APPELLANT

Vs

E.C.C. Project Pvt. Ltd. RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 271, 271(1)(c), 271B, 44AB

Citation : (2015) 374 ITR 44

Hon'ble Judges : Tarun Agarwala, J;Satish Chandra, J.

Bench : Division Bench

Advocate : Shambhu Chopra, A. Kumar, A.N. Mahajan, B. Agarwal and G. Krishna, for the Appellant; Amit Shukla and S.K. Garg, for the Respondent

Judgement

Dr. Satish Chandra, J.?The present appeal is filed by the Department against the order dated August 20, 1999, passed by the Income-tax Appellate Tribunal, Allahabad, in I.T.A. No. 403 (Alld.) for the assessment year 1987-88 where the penalty of Rs. 1,00,000 imposed under section 271B was cancelled. The appeal was admitted on the following substantial questions of law:

"(a) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was legally correct in holding that the Assessing Officer was not justified in initiating the proceedings for imposition of penalty under section 271B of the Income-tax Act at a time when no assessment proceedings or any other proceedings were pending?

(b) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was legally correct in cancelling the penalty of Rs. 1,00,000 (rupees one lakh only) imposed on the asses-see under section 271B of the Income-tax Act, 1961, by the Assessing Officer and confirmed in the first appeal by the Commissioner of Income-tax (Appeals)?

(c) Whether having regard to the fact that section 271B of the Income-tax Act, 1961, or any other provision of the Income-tax Act, 1961, nowhere prescribes a limitation for the initiation of penalty proceedings under section 271B of the Income-tax Act, 1961, and nowhere provides that the penalty proceedings under section 271B of the Income-tax Act, 1961, should be initiated during the course of assessment proceedings or any other proceedings under the Income-tax Act, 1961, the Income-tax Appellate Tribunal was legally correct in taking a view to the contrary and in cancelling the penalty under section 271B of the Income-tax Act, 1961, imposed by the Assessing Officer and confirmed in the first appeal by the Commissioner of Income-tax Act (Appeals)?"

2. The brief facts of the case are that for the assessment year under consideration, the assessee had filed its return. The Assessing Officer found that the audit report under section 44AB was not obtained well on time so he levied the penalty which was upheld by the first appellate authority. However, the Tribunal has cancelled the penalty. Not being satisfied the department has filed the present appeal.

3. With this background, heard Sri Shambhu Chopra, learned counsel for the appellant-Department. He submits that time to time extension was granted for filing the return along with the tax audit report but it was not filed well in time. In earlier assessment year, the assessee has filed the belated tax audit report along with the return. The assessee is in the habit of not complying with the mandatory provision of law.

4. However, on specific query from the Bench, he admits that there was no whisper about the levy of the penalty in the assessment order. The assessment order is silent as already observed by the Tribunal in paragraph 8 of its order.

5. On the other hand, Sri Ashish Bansal, learned counsel for the assessee has justified the impugned order. He submits that since the Revenue has not referred to any proceedings during which the penalty proceeding can be started and, therefore, penalty cannot be levied.

6. We have heard both the parties at length and also gone through the materials available on record. In the case of Commissioner of Income Tax Vs. Ram Commercial Enterprises Ltd., , it was observed that (headnote):

"The satisfaction as to the assessee having concealed the particulars of his income or furnished inaccurate particulars of such income is to be arrived at by the Assessing Officer during the course of any proceedings under the Act, which would mean the assessment proceedings, without which, the very jurisdiction to initiate the penalty proceedings is not conferred on the assessing authority by reference to clause (c) of sub-section (1) of section 271 of the Income-tax Act, 1961.

A bare reading of the provisions of section 271 and the law laid down by the Supreme Court makes it clear that, it is the assessing authority who has to form his own opinion and record his satisfaction before initiating the penalty proceedings. Merely because the penalty proceedings have been initiated it cannot be assumed that such a satisfaction was arrived at."

7. Further, in the case of Commissioner of Income Tax Vs. Auto Lamps Ltd., , it was observed that (headnote):

"without even mentioning the essential ingredients which the Assessing Officer is obliged to record for initiation of penalty proceedings, the order was passed to initiate penalty proceedings in a routine manner, an apparent violation of the relevant provisions. The Assessing Officer failed to record the requisite satisfaction in consonance with the settled principles of law. Therefore, the order suffered from the infirmity of non-application of mind. The Commissioner (Appeals) and the Tribunal had rightly deleted the penalty. No question of law arose for consideration of the court."

8. Moreover, in the case of Commissioner of Income Tax Vs. Vikas Promoters (P) Ltd., , it was observed that (headnote):

"It is mandatory for the Assessing Officer to record satisfaction before drawing an inference for the purpose of levying penalty while completing the assessment under section 143(3) of the Income-tax Act, 1961. The provisions of section 271(1)(c) are penal in nature, thus must be strictly construed, and the element of satisfaction should be apparent from the order itself. It is not for the courts to go into the mind of the authorities or trace the reasons from the file of such authorities."

9. Similar views were expressed in the following cases:

(i) Karanvir Singh Gossal Vs. Commissioner of Income Tax and Another, ; and

(ii) Nainu Mal Hot Chand Vs. Commissioner of Income Tax, .

10. In view of above, well settled legal position, we are of the view that in the instant case, no penalty is leviable under section 271B of the Act when the Assessing Officer failed to record its satisfaction in the assessment order pertaining to it. There is no whisper in the assessment order regarding the levy of the penalty. When it so then we find no reason to interfere with the impugned order. The same is hereby sustained along with the reasons mentioned therein.

11. Answer to the substantial questions of law is in favour of the assessee and against the Department. In the result, the appeal filed by the Department is dismissed.