(2009) 11 AHC CK 0332

In the Allahabad High Court

Case No : Income-Tax Appeal No. 142 of 2000

Commissioner of Income Tax — APPELLANT

Vs

Hindustan Computers Ltd. — RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 144B, 260A, 271(1)(c)

Citation : (2010) 322 ITR 88

Hon'ble Judges : Subhash Chandra Nigam, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, A. Kumar, B.J. Agarwal, D. Awasthi, G. Krishna, R.K. Upadhayay and S. Chopra, for the Appellant;

Final Decision : Dismissed

Judgement

1. The appeal has been filed u/s 260A of the income tax Act, 1961, against the order dated August 5, 1999 passed by the income tax Appellate Tribunal, Delhi Bench "A", Delhi, in I.T.A. No. 826 (Del) /92. In the memo of appeal, the following question of law has been sought to be raised:

Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in deleting the penalty of Rs. 5,00,000 imposed u/s 271(1)(c) of the income tax Act, 1961, by the Assessing Officer and upheld by the learned Commissioner of income tax (Appeals)

Heard Shri A.N. Mahajan, learned standing counsel for the Department.

2. The dispute relates to the assessment year 1981-82. The assessee filed its return of income tax declaring loss of Rs. 4,14,560. The said return was revised and the loss was enhanced to Rs. 7,25,980. The original assessment was completed u/s 143(3) /144B at a total income of Rs. 30,02,710. An addition of Rs. 6,00,000 was made on account of unaccounted stock of dismantled peripherals. An explanation was asked from the assessee but the assessee failed to satisfy the Assessing Officer. The penalty proceedings u/s 271(1)(c) were

initiated. The matter reached the Tribunal in second appeal at the instance of the assessee. The Tribunal has dealt with the matter in paragraph 7 of the order and reached the conclusion that whatever additions were made, it is now adjusted for the closing stock of the assessee. The Tribunal has recorded categorically findings that there is no question of any concealment of income. Further finding, which has been recorded by the Tribunal is that none of the authorities below has found that the explanation given by the assessee is false. The Tribunal has stated in specific terms that the assessee has placed all the materials before the Revenue authorities and a conclusion has arisen against which the assessee has not gone in appeal. It does not mean that the assessee has concealed particulars of the income. Having found so, that the explanation given by the assessee is bona fide, the Tribunal has rightly set aside the penalty order.

3. Learned standing counsel could not point out any error legal or factual in the order of the Tribunal.

4. This being so, we are of the opinion that the appeal is concluded by findings of the fact. None had appeared to oppose the appeal on behalf of the respondent. The appeal is dismissed. No order as to costs.

