(2014) 01 P&H CK 0118

In the Punjab And Haryana At Chandigarh

Case No : Income Tax Reference No. 29 of 1998

Commissioner of Income Tax — APPELLANT

Vs

Hindustan Hydraulics — RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 271(1)(c)

Citation : (2014) 369 ITR 255

Hon'ble Judges : Anita Chaudhry, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Vivek Sethi, Advocate for the Appellant; Sanjay Bansal, Senior Advocate and S.K. Mukhi, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—The following question of law has been referred at the instance of the Revenue for the opinion of this court by the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated May 31, 1996, in I.T.A. No. 304(ASR)/91 for the assessment year 1977-78:

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in deleting the penalty under section 271(1)(c) levied by the Assessing Officer on the basis of furnishing false information in respect of investment allowance/depreciation claims, while the quantum appeal of the assessee before the hon''ble High Court is pending for decision?"

Briefly, the facts relevant for the decision of the controversy involved, as available on the record, are that assessment was completed on March 26, 1986, at an income of Rs. 8,56,075. Since the assessee had claimed investment allowance and depreciation amounting to Rs. 3,91,216 and Rs. 2,34,789 by furnishing false information in respect of installation and use of the machinery, penalty proceedings under section 271(1)(c) of the Act were initiated. After allowing fresh opportunity of being heard and considering the reply of the assessee filed on January 29, 1988, the Inspecting Assistant Commissioner of Income-tax (Assessment), Range I, Jalandhar, levied penalty under section

271(1)(c) of the Act amounting to Rs. 1,54,083, vide order dated February 23, 1988. Being not satisfied with the order of the Assessing Officer, the assessee went in appeal before the Commissioner of Income-tax (Appeals), Jalandhar, (CIT(A)). Vide order dated December 14, 1990, the Commissioner of Income-tax (Appeals) dismissed the appeal. Aggrieved by the order, the assessee filed an appeal before the Tribunal. Vide order dated May 31, 1996, the appeal was dismissed. Hence, the present appeal by the assessee.

2. Learned counsel for the Revenue submitted that the Assessing Officer as well as the Commissioner of Income-tax (Appeals) in the quantum proceedings had adjudicated the issue against the assessee and in such circumstances, the Tribunal was not justified in deleting the penalty.

3. On the other hand, learned counsel for the assessee besides supporting the order passed by the Tribunal relied upon the judgments in Commissioner of Income Tax Vs. Calcutta Credit Corporation, , Commissioner of Income Tax Vs. Manilal Tarachand, , Commissioner of Income Tax Vs. Late G.D. Naidu and Others (By Lrs. G.D. Gopal and Another), , Commissioner of Income Tax Vs. SSP P. Ltd., and Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd., to submit that since the assessee had furnished the report of M/s. Blue Star Ltd. wherein it was stated that the machinery was erected and installed in February, 1977, the findings recorded by the authorities were not correct though on the basis of report submitted by M/s. A.B.C. Consultants Ltd. in the assessment proceedings, it was held that the machinery was erected and installed during the period relating to the assessment year 1978-79. It was further argued that the penalty of Rs. 1,54,083 imposed on the assessee by the Assessing Officer and upheld by the Commissioner of Income-tax (Appeals) was unjustified. Support was drawn from the following findings recorded by the Tribunal:

"11. We have considered the rival submissions and have gone through the order passed by the Assessing Officer under section 271(1)(c) as well as the Commissioner of Income-tax (Appeals) confirming the penalty. We have also gone through the orders passed by the Assessing Officer and the Commissioner of Income-tax (Appeals) and the Tribunal in the quantum appeal. As is clear from the order of the Tribunal in the quantum appeal, the addition has been upheld on the ground that the Tribunal preferred to accept the evidence of M/s. ABC Consultants (P.) Ltd. in the form of their report submitted to the New Bank of India as against the report of M/s. Blue Star Ltd. through whom the assessee purchased the machineries and who were responsible for erectioning and commissioning of the same. Shri P.C. Roy, who had prepared the report of M/s. ABC Consultants (P) Ltd., who had inspected the premises and could not be produced either by the assessee or summoned by the Assessing Officer for examination so as to verify the veracity of the report of M/s. ABC Consultants (P.) Ltd. On the other hand, the Assessing Officer has recorded the statement of one Shri Deepak Bhargava, senior manager of M/s. ABC Consultants (P.) Ltd., New Delhi, who gave the statement on the basis of the report and the Tribunal preferred to accept the report of M/s. ABC Consultants (P.) Ltd. in preference to the report of M/s. Blue Star Ltd. The Tribunal while upholding the addition in paragraph 29 of the order has observed as under:

''29. We have carefully considered the rival submissions as also the facts on record. Whether a machinery is installed or not is a matter of physical verification. The contemporaneous evidence in the form of report of the consultants clearly suggested that the machinery had either not been installed in June, 1977, or only a part of it had been installed in the second week of June, 1977. The report was submitted by an objective, independent party who could not said to be an interested party at all. These consultants who have experience and expertise in specialised fields normally submit report based on true facts and do not introduce a slant or deliberate error or exaggeration in the reports. In the instant case, the report submitted by the consultants which was in different context merely noted certain facts which were discovered by them as a result of physical verification and inspection. The report of the consultants, therefore, is not based on any expression of opinion but is based on hard facts discovered as a result of visual verification. The Assessing Officer at the time of reassessment proceedings made diligent efforts to record the statement of Shri P.C. Roy who inspected the premises. The Assessing Officer contacted the director of M/s. ABC Consultants (P.) Ltd. and also recorded the statement of Shri Deepak Bhargava, senior manager of the consultancy company. Shri K.S. Khosla, director of M/s. Hindustan Hydraulics (P.) Ltd. also cross-examined Shri Bhargava, copies of the statement of Bhargava and his cross-examination are annexed to the assessment order passed by the Assessing Officer and the contents thereof need not be reproduced here. The consideration of bona fides or mala fides on the facts of the instant case is irrelevant. If the assessee did not in fact instal the machinery and/ or did not use it, it could not claim investment allowance or depreciation. Whether the assessee did this with a particular motive is beside the point. It is also irrelevant as to whether the assessee could have claimed investment allowance and depreciation in the subsequent year. All these considerations are not material. If the fact is which on the appreciation of evidence we think it to do so, that the assessee did not even instal the aforesaid machinery in the year under consideration, then it could not claim investment allowance and depreciation on the said machinery in the year relevant to the assessment year 1977-78.''

The above findings of the Tribunal are not final, which is apparent from the facts that the hon''ble Punjab and Haryana High Court has accepted the assessee''s petition under section 256(2) and has directed the Tribunal to refer the two questions of law, which we have already reproduced earlier in paragraph 4 above of this order. In this view of the matter, we are of the considered opinion that it is not a case fit for levy of penalty under section 271(1)(c) of the Income-tax Act, 1961, as admittedly the additions in the quantum assessment on account of disallowance of claimed depreciation and investment allowance have been sustained by the Tribunal by preferring one set of evidence against another set of evidence and even that finding is now open as the hon''ble Punjab and Haryana High Court at Chandigarh has directed the Tribunal to draw up the statement of the case for reference of two questions of law, reproduced in paragraph 4 above. In the result, we will set aside the order of the Commissioner of Income-tax (Appeals) confirming the penalty."

4. After hearing learned counsel for the parties, we do not find any merit in the contention of the learned counsel for the Revenue.

5. The assessee had produced the report of M/s. Blue Star Ltd. through whom the assessee had purchased the machineries and who were responsible for erecting and commissioning of the same which corroborated the version of the assessee. The purchase of machinery during the assessment year 1977-78 was not doubted in view of bills, gate pass, freight charges paid, etc. However, while disallowing depreciation and investment allowance, on the basis of the report of M/s. ABC Consultants Ltd., it was recorded that the machinery was not put to use during the assessment year 1977-78. The report of M/s. ABC Consultants Ltd. was preferred over the report of M/s. Blue Star Ltd. and addition on account of disallowance of depreciation and investment allowance was sustained during the assessment proceedings. In the present case, the Tribunal while deleting the penalty had discussed the plausibility of both the reports and adopted a view deleting the penalty levied. In the peculiar facts and circumstances of the case and without laying down any precedent, we are inclined to accept the view of the Tribunal even though the addition has been sustained in the assessment proceedings regarding disallowance of depreciation and investment allowance by preferring one set of evidence. No finding has been recorded that the other piece of evidence is fabricated or manipulated.

6. In view of the above, the question of law referred is answered in favour of the assessee and against the Revenue. The reference stands disposed of accordingly.