
(2004) 09 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 135 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Jagjit Engineering Works P. Ltd.

RESPONDENT

Date of Decision : 13-09-2004

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2005) 275 ITR 239

Hon'ble Judges : S.S. Grewal, J;N.K. Sud, J

Bench : Division Bench

Advocate : N.L. Sharda, for the Appellant; Adish Gupta, for the Respondent

Judgement

1. At the instance of the Revenue the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short "the Tribunal") has referred the following question of law arising out of its order dated March 12, 1987, relating to the assessment year 1979-80 for the opinion of this court :--

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the findings of the Commissioner of Income Tax (Appeals) cancelling the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961, on the ground that there was no conscious and deliberate concealment on the part of the assessee ?"

2. During the course of assessment proceedings relating to the assessment year 1979-80, the Assessing Officer found that certain goods were rejected by the Hindustan Machine Tools and were sent back to the assessee vide G. R. No. 21057 dated September 16, 1979. Since the same had been rejected prior to the expiry of the financial year relating to the assessment year 1979-80, the value of the rejected goods was required to be included in the closing stock as on March 31, 1979. On being confronted, the assessee conceded that it was its bona fide mistake in not including the said amount in the closing stock as on March 31, 1979. It was, however, explained that the value of rejected goods had duly been

entered in the book on September 17, 1979. Accordingly, the assessee offered a sum of Rs. 42,234, being the value of the rejected goods, for addition to its total income. The Income Tax Officer not only made the addition but also initiated penalty proceedings for concealment of income. He issued a show-cause notice in response to which the assessee filed a written reply reiterating his stand that it was only on account of a bona fide mistake that the goods were not entered in the books on March 31, 1979. The Assessing Officer, however, rejected the explanation and held that the default of the assessee was clearly established and, therefore, levied a penalty of Rs. 24,390 equal to the tax sought to be evaded u/s 271(1)(c) of the Act. On appeal, the Appellate Assistant Commissioner of Income Tax accepted the explanation of the assessee and deleted the penalty. On further appeal by the Revenue, the Tribunal upheld the findings of the Appellate Assistant Commissioner by observing as under :--

"In our opinion, there is no ground to interfere. As pointed out by the Commissioner of Income Tax (Appeals), it is undisputed that the rejected goods were not received in the assessee's godown on the closing day, i.e., March 31, 1979 and they were received long after, i.e. in September, 1979 when necessary entries were made in the closing stock. From the order of the Income Tax Officer, it also appears that the mistake in the assessee's account was pointed out some where in April, 1981, whereas the entries in the stock register had been made some 18 months earlier, i.e., in September, 1979. If the assessee had any mala fide intention, it would not enter the goods in his stock at all. This was done by it much before the commencement of the assessment proceedings in this case and these goods must have been accounted for in the accounts of the next year, i.e., the assessment year 1980-81. The only ground urged with great force by the departmental representative before us was that the assessee should have made entries in its books as soon as entries of the adjusted value of these goods had been made by the assessee. This could be a mistake as has been pointed out by the Commissioner of Income Tax (Appeals). In spite of the fact that the Department came upon in second appeal before the Tribunal, no effort have been made by the Income Tax Officer to find out if these goods had been duly entered in the stock in September, 1979, when these were actually received back and if they were duly entered, the assessee's intention cannot be said mala fide and it is a clear case of bona fide mistake. While it is not in every case of an agreed addition that the penalty has to be levied and if a mistake is due to some bona fide inadvertence on the part of the assessee, penalty need not necessarily be levied because an honest omission on the part of the assessee, would not attract penalty and in this behalf the assessee's case is fully supported by the decision cited by the Commissioner of Income Tax (Appeals), i.e., Commissioner of Income Tax, Kerala Vs. N.A. Mohamed Haneef, ."

3. Learned counsel for the Revenue has not been able to controvert the factual position as noticed by the Tribunal. From the above findings, it is clear that the Tribunal has accepted the explanation of the assessee that it was only because of bona fide mistake that the value of rejected goods were not shown in the closing

stock as on March 31, 1979. The findings recorded by the Tribunal are essentially findings of fact which have not been shown to be erroneous or perverse. In view of these uncontroverted facts, the conclusion of the Tribunal has to be upheld. Accordingly, the question is answered in the affirmative, i.e., in favour of the assessee and against the Revenue. Ordered accordingly.