(1993) 04 RAJ CK 0001

In the Rajasthan High Court

Case No : .I.T. Reference No. 105 of 1981

Commissioner of Income Tax APPELLANT

Vs

L.K. Kasliwal RESPONDENT

Date of Decision : 19-04-1993

Acts Referred:
Income Tax Act, 1961 — Section 210, 212, 212(3A), 273

Citation : (1994) 205 ITR 370 : (1994) 76 TAXMAN 209

Hon'ble Judges : S.C. Agrawal, C.J;V.K. Singhal, J

Bench : Division Bench

Advocate : K.S. Gupta, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated June 17, 1980, in respect of the assessment year 1975-76 ;

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty of Rs. 12,230 imposed u/s 273(c) of the Income Tax Act, 1961 ?"

2. The brief facts of the case are that the assessee is a partner in the firm, Messrs. Gem Palace, Jaipur, and was an assessee hitherto to assessment within the meaning of Section 210(1) of the Income Tax Act, 1961. The Income Tax Officer demanded advance tax for the financial year 1974-75 relevant to the assessment year 1975-76, u/s 156 read with Section 210 of the said Act, of Rs. 31,577. This figure was arrived at on the basis of the assessed income of Rs. 31,380. In accordance with the provisions of Section 212(3A) of the Act an assessee who is required to pay advance tax by order u/s 210, for the reason that the current income is likely to be greater than the income on which the advance tax is payable by him u/s 210 by more than 33 y per cent. then he has to send the estimate before the date on which the last instalment of advance tax is due. The difference of the tax finally determined and advance tax demanded u/

s 210 was more than 33 y per cent. and the assessee was required to revise and to file an estimate of advance tax in accordance with the above provisions and to pay the tax accordingly. Since this was not done, the Income Tax Officer initiated proceedings u/s 273(c) and imposed a penalty of Rs. 12,230 after giving opportunity. In the reply submitted to the Income Tax Officer it was mentioned that till the last date on which the last instalment of advance tax was due, the assessee had no reason to believe that his current income was likely to be greater than the income on which the advance tax was demanded u/s 210 and it was on account of heavy additions in the assessment of the firm that the income has increased. It was also mentioned that at the time of proceeding u/s 144B in the case of the firm it was agreed that the partners will not be penalised for any default under Sections 271(1)(a), 271(1)(c) and 273. The Income Tax Officer came to the conclusion that it was obligatory upon the assessee to file a higher estimate of his total income and pay the tax thereon and in the proceedings u/s 144B, the minimum penalty of ten per cent. of the tax was directed to be imposed. The assessee was found to have filed the return showing an income of Rs. 2,35,984.

3. The matter was challenged by the assessee before the Commissioner of Income Tax (Appeals), Jaipur, where a contention was raised that the search operations were launched on November 19, 1974, and continued till December 6, 1974. The books were seized on December 6, 1974, and the last date for submission of the estimate of advance tax u/s 212(3A) was December 14, 1974. The Commissioner of Income Tax (Appeals) came to the conclusion that the appellant fully knew that its income is going to be far greater than the income on the basis of which the advance tax was demanded as on account of the search undisclosed stock of more than Rs. 10 lakhs was surrendered by the firm. The appeal was dismissed.

4. In the second appeal before the Income Tax Appellate Tribunal, it was held that the firm was prevented by reasonable cause from estimating its income and the same would apply to the partners. The fact that the assessee had had a severe heart attack was also brought to the notice of the Tribunal. Primarily, the finding that the assessee was prevented by reasonable cause is a finding of fact.

5. Accordingly, it is held that the Income Tax Appellate Tribunal was justified in cancelling the penalty of Rs. 12,230 imposed u/s 273(c) of the Income Tax Act, 1961. The reference is, accordingly, answered in favour of the assessee and against the Revenue.