

(2003) 04 P&H CK 0135
In the Punjab And Haryana At Chandigarh
Case No : Income Tax A. No. 230 of 2002

Commissioner of Income Tax

APPELLANT

Vs

Munish Iron Store

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Income Tax Act, 1961 — Section 131, 143(3), 271(1)

Citation : (2004) 186 CTR 159 : (2003) 263 ITR 484

Hon'ble Judges : S.S. Grewal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.P. Sawhney and V.P. Malik, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—In this appeal, the Revenue has prayed for determination of the following question :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in law in cancelling the penalty of Rs. 4,38,172 levied u/s 271(1)(c) of the Income Tax Act, 1961, holding that the penalty imposed was not valid and jurisdiction to impose the same was illegally assumed without recording a proper satisfaction, whereas the Assessing Officer passed a speaking order u/s 271(1)(c) of the Income Tax Act establishing that the assessee had wilfully and deliberately concealed the true and correct particulars of its income, a reference to which was duly made in the assessment order by way of initiating penalty proceedings u/s 271(1)(c) of the Act ?"

2. The facts necessary for deciding the appeal are that the assessee filed a return on October 29, 1992, for the assessment year 1992-93 disclosing an income of Rs. 74,155. During the pendency of the assessment proceedings, the concerned authority got the information that the assessee had purchased drafts from the bank and had cash which was unaccounted. In this connection, a statement of the father of the assessee's partner--Shri Roop Chand, was

recorded on March 16, 1993. Upon this, books of account of the assessee were impounded u/s 131 of the Income Tax Act, 1961 (for short, "the Act"). Thereafter, the assessee filed a revised return showing an income of Rs. 9,43,155. By an order dated March 30, 1994, the Assistant Commissioner of Income Tax, Circle II, Chandigarh, finalised the assessment u/s 143(3) on the basis of the revised return filed by the assessee. He also ordered initiation of proceedings u/s 271(1)(c) of the Act for levy of penalty. After considering the reply of the assessee, the Assessing Officer levied penalty of Rs. 4,38,172. The Commissioner of Income Tax (Appeals), Chandigarh, dismissed the appeal of the assessee and upheld the order of penalty. The Income Tax Appellate Tribunal, Chandigarh (for short, "the Tribunal"), rejected the assessee's plea that it had filed the revised return voluntarily but upheld its challenge to the penalty on the ground that while finalising the assessment, the Assessing Officer did not record satisfaction in terms of Section 271(1)(c) of the Act.

3. Shri Sawhney argued that failure of the assessee to file a correct return was by itself sufficient for levy of penalty u/s 271(1)(c) of the Act and the Tribunal committed a serious error by setting aside the orders of the assessing authority and the Commissioner of Income Tax (Appeals) only on the ground of non-recording of satisfaction by the Assessing Officer in the order of assessment.

4. In our opinion, there is no merit in the argument of learned counsel. A reading of the order passed by the Tribunal shows that after making a reference to the judgments of the Supreme Court and some High Courts in *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, ; *D.M. Manasvi Vs. Commissioner of Income Tax, Gujarat, II Ahmedabad*, ; *Commissioner of Income Tax Vs. Ram Commercial Enterprises Ltd.*, and *Diwan Enterprises Vs. Commissioner of Income Tax*, the Tribunal culled out the proposition of law in the following words :

"It is clear from above that jurisdiction to impose penalty flows from recording of the satisfaction and in case there is a jurisdictional defect in the assumption of jurisdiction, it cannot be cured. With the aforesaid legal quoting, we are to examine the question whether the Assessing Officer assumed proper jurisdiction. It is again to be noted that from the issue of notice u/s 271(1)(c), the recording of legal and valid satisfaction cannot be assumed."

5. The Tribunal then referred to the order of assessment passed by the Assessing Officer and observed :

"It is clear from the above that not a word has been written about concealment of income. The Assessing Officer quietly accepted the revised return and the income disclosed therein. He did not record how and why the revised return was submitted. The statement of the partner on pages 14-16 of the paper book, Shri Ramesh Kumar was recorded and in that statement, he did explain the reasons which led to filing of the revised return. Learned counsel for the assessee contended that those reasons were impliedly accepted by the Assessing Officer. Looking at the assessment order, one cannot challenge the above assertion of

learned counsel for the assessee. At any rate, the satisfaction about the concealment of income of furnishing of inaccurate particulars of income to assume jurisdiction to initiate and levy penalty is clearly not recorded as enjoined by law. The above jurisdictional defect in our view cannot be cured. Accordingly, we hold that penalty imposed is not valid and jurisdiction to impose the same was illegally assumed without recording a proper satisfaction. Penalty imposed is cancelled for the above reasons."

6. In our opinion, the reasons assigned by the Tribunal for cancellation of the penalty are legally correct and the order passed by it does not give rise to any question of law, much less a substantial question of law requiring determination by this court u/s 260A of the Act.

7. Hence, the appeal is dismissed.