(2007) 01 AHC CK 0025

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Navdeep Arora RESPONDENT

Date of Decision : 02-01-2007

Acts Referred:
Income Tax Act, 1961 — Section 139(4), 271B

Citation : (2007) 01 AHC CK 0025

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal, J.—The Income Tax Appellate Tribunal, Allahabad has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this Court:

Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in sustaining the order of the Commssioner (Appeals) cancelling the penalty of Rs. 25,309 imposed u/s 271B of the Income Tax Act, 1961, by holding that no penalty under the said Section is exigible for failure to furnish the audit report u/s 44AB along with the return u/s 139(1) if the same is furnished along with the return filed by the assessee u/s 139(4) of the Income Tax Act, 1961?

2.The reference relates to the assessment year 1989-90. Briefly stated, the facts giving rise to the present reference are as follows:

Audit report u/s 44AB due to be filed on or before 31-10-1989, was filed by the assessee along with the belated return on 19-1-1990. A penalty of Rs. 25,309 was as such imposed u/s 271B of the Act. On the premises that the audit report was obtained by the assessee on. 26-10-1989, i.e., well within time, the Commissioner (Appeals) deleted the penalty. This view was upheld by the Tribunal following its various similar decisions on the point.

3. We have heard Sri A.N. Mahajan, learned Standing Counsel for the revenue.

4. We find that this court in the case of Commissioner of Income Tax Vs. Jai Durga Construction Co., has held that prior to the amendment by the Finance Act, 1995, with effect from 1-7-1995 no penalty, was exigible u/s 271B for not filing the audited report along with the return.

5. Respectfully following the aforesaid decision, we answer the question referred to us in favour of the assessee and against the revenue. There shall be no order as to costs.

