(2005) 01 P&H CK 0163

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No. 92 of 1999

Commissioner of Income Tax APPELLANT

Vs

Pawan Rice Mills RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:
Income Tax Act, 1961 — Section 139(1), 139(4), 142(1), 256(1), 271B

Citation : (2005) 198 CTR 694

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

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant;

Judgement

1. On an application filed by the CIT, Rohtak, u/s 256(1) of the IT Act, 1961 (for short, ''the Act''), the Income Tax Appellate Tribunal, Delhi Bench ''C'', New Delhi (for short, ''the Tribunal''), has referred the following question of law for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal was right in law in interpreting the provisions of Section 271B and thereby confirming the order of learned CIT(A), who deleted the penalty of Rs. 59,410 imposed u/s 271B by the AO ?"

2. For the asst. yr. 1990-91, the assessee filed return without the audit report as required by Section 44AB. Therefore, while finalising the assessment, the AO issued penalty notice u/s 271B of the Act. Vide order dt. 13th Sept., 1991, he imposed penalty of Rs. 59,410. On appeal, CIT(A), Faridabad, reversed the penalty order. Further appeal filed by the Revenue was dismissed by the Tribunal vide its order dt. 8th May, 1998. Para 5 of that order reads as under :

"5. On considering the rival submissions, we agree with the contention raised by the learned Counsel for the assessee. A bare reading of Section 44AB and Section 271B it is evident that assessee has to get his accounts audited and obtain a report of such audit on or before the specified date as required u/s 44AB and. further to furnish the said report along with the return of income filed under Sub-section (1) of Section 139 or along with the return of income furnished in response to a notice u/s 142(1)(i) of the Act. In the present case, undisputedly the assessee''s accounts were audited on 23d July, 1990. It is well before the prescribed date i.e., 31st Oct., 1990. However, the return was filed late for which the assessee could be penalised under the relevant provisions for late filing of the return. Another requirement of Section 271B is that the audit reports must accompany a return filed u/s 139(1) or a return filed u/s 142(1)(i) of the IT Act. In assessee''s case, the return of income cannot be treated as a return filed u/s 139(1). In this view of the matter, we do not find any ground to interfere with the order of CIT(A) and accordingly the order of the CIT(A) is upheld."

3. We have heard Shri Rajesh Bindal. In Income Tax Officer Vs. Kaysons India, a Division Bench of this Court interpreted the provisions of Section 271B, and Section 44AB of the Act and held as under :

"It is, therefore, evident that the default or failure to file the return along with the audit report on or before the specified date is not hit by the provisions of Section 271B. It is not the case of the Revenue that the assessee has failed to get the accounts audited or has failed to obtain the report of such audit in terms of Section 44AB before the specified date. It is also evident that no return had been filed either under Sub-section (1) of Section 139 or in response to any notice under Clause (i) of Sub-section (1) of Section 142 and as such there could possibly be no default of not furnishing the audit report along with such a non-existent return. The return under Sub-section (1) of Section 139 in this case could be filed upto 30th Nov., 1990. However, the assessee had filed the return on 31st Dec., 1990, which was a return filed under Sub-section (4) of Section 139 and this return was duly accompanied by the audit report obtained by the assessee in accordance with the provisions of Section 44AB. Thus, according to us, the default for which penalty had been levied was not covered by the provisions of Section 271B and the CIT(A) and the Tribunal were justified in holding that no penalty was leviable."

4. In view of the aforementioned judgment, the question referred by the Tribunal is answered against the Revenue and in favour of the assessee.

5. The reference is disposed of in the manner indicated above.