(2010) 06 KAR CK 0131

In the Karnataka High Court

Case No : IT Appeal No. 864 of 2005

Commissioner of Income Tax APPELLANT

Vs

Prasad Granites RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:
Income Tax Act, 1961 — Section 143 (1) (a), 143 (2), 271 (1) (c)

Citation : (2010) 06 KAR CK 0131

Hon'ble Judges : N.K. Patil, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; A. Shankar and M. Lava, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the revenue arises out of the impugned common order dated 12-8-2004 passed in ITA No. 1670/Bang./2002 by the Income Tax Appellate Tribunal, Bangalore Bench B for consideration of the following substantial questions of law:

(1) Whether Tribunal was correct in holding that the expression "has concealed the particulars of income" or "furnished inaccurate particulars of such income" as defined u/s 271(1)(c) is not attracted to the facts of the case?

(2) Whether Tribunal was correct in holding that the penalty levied u/s 271(1)(c) is outside the purview of the assessing officer even though concealment of income has come to his notice subsequent to a search conducted elsewhere?

2. The facts in brief are that, the Assessee is engaged in the business of exporting Indian granite products. The Assessee filed the original return of income on 31-8-1997, declaring loss of Rs. 5,23,483. A revised return was filed on 4-12-1997 declaring a loss of Rs. 6,26,850 and claimed return of TDS amount of Rs. 1,20,000. This was processed u/s 143(1)(a) on 5-2-1998, determining current year loss at Rs. 2,95,959. The case was selected for scrutiny and after issue of notice, assessment was completed u/s 143(3) on 22-2-2000, adopting

on a total Nil income. After the completion of assessment, the Assessee filed one more return of income on 31-8-2000. Consequent to survey operations of the Assessee pursuant to the search conducted in the case of M/s. Biligiri Granites, Mysore, the Assessee filed a revised return of income. In response to the notice u/s 148, the Assessee vide letter dated 31-8-2000, requested to treat the revised return filed in response to notice u/s 148. Thereafterwards, after personal hearing of the Assessee and their representative, an order came to be passed on 24-1-2002. Pursuant to the same, penalty proceedings u/s 271(1)(c) of the Act was initiated and an order came to be passed on 31-7-2002, levying penalty of Rs. 2,20,000. Being aggrieved by the same, the Assessee filed an appeal before the Commissioner (Appeals)-IV, Bangalore in ITA.48/R-9/ Commissioner (Appeals)/IV/2002-03. The first appellate authority, by its order dated 18-10-2002, dismissed the appeal, holding that, the Assessee has furnished inaccurate particulars of income and hence, the assessing officer was justified in imposing penalty of Rs. 2,20,000 u/s 271(1)(c) of the Act and confirmed the order of the assessing officer. Being aggrieved by the said order, the Assessee filed an appeal before the Income Tax Appellate Tribunal, Bangalore Bench B (Tribunal for short) in ITA No. 1670/Bang./2002. The said matter came up for consideration before the Tribunal and the Tribunal allowed the appeal filed by Assessee, holding that the penalty so levied on the Assessee deserves to be deleted. Being aggrieved by the order impugned passed by the Tribunal, the Appellants are in appeal before this Court, raising the aforesaid substantial questions of law.

3. We have heard learned Counsel appearing for revenue as well as the learned Counsel appearing for the Respondent-Assessee, for quite sometime.

4. Learned Counsel appearing for revenue, at the outset, submitted that the Tribunal has committed a grave error and material irregularity in as much as instead of considering the case on merits, it has proceeded to dispose of the matter, following the decision of the Apex Court in the case of Commissioner of Income Tax Vs. Suresh Chandra Mittal, , wherein it was held that the High Court was justified in holding that no penalty could be levied. He submitted that, the Division Bench of this Court in CIT v. Sunrise Industrial Syndicate IT Referred Case No. 246 of 1998, following the decision of the Apex court in the case of M/ s. K.P. Madhusudhanan Vs. Commissioner of Income Tax, Cochin, has held that, the Tribunal was not right in cancelling the penalty u/s 271(1)(c) of the Act. Against the said decision of the Division Bench, the Assessee. Sunrise Industrial Syndicate had filed an appeal before the Apex Court in SLP (Civil) No. 12934/2005, which was dismissed, holding that there is no reason to interfere. Therefore, he submitted that, the impugned common order passed by the Tribunal is liable to be set aside at the threshold itself.

5. As against this, learned Counsel for Assessee, inter alia, contended and substantiated the said order and has taken us through the order passed by the Assistant Commissioner of income tax, dated 31-7-2002 vide Annexure B and

pointed out that there is no finding as such recorded by the said authority. Further, he submitted when this fact was specifically pointed out before the first appellate authority, the said authority also committed an error in not considering the said aspect and dismissed the appeal filed by the Assessee. Further, learned Counsel for Assessee drew our attention to the order passed by the Tribunal and submitted that, the Tribunal, on re-appreciation of oral and documentary evidence coupled with other relevant material available on file and placing reliance on Suresh Chandra Mittals case (supra) has allowed the appeal filed by them and the same is a well considered order and hence, it does not call for interference by this Court. Therefore, he submitted that the orders passed by the first appellate authority and the assessing officer cannot be sustained and are liable to vitiate.

6. After careful consideration of the submission of the learned Counsel appearing for the parties and after perusal of the orders impugned passed by all the three authorities, it emerges as rightly pointed out by learned Counsel for Assessee that, the assessing officer, by his revised order, has referred to five different figures and revised returns submitted by the Assessee, but, there is no finding as such recorded by the said authority regarding concealment. After carefully going through the order passed by the assessing officer, it is seen that, the said authority has not recorded any finding of fact regarding concealment of the revised returns submitted by the Assessee. Therefore, we do not find any justification or good grounds to sustain the order of penalty passed by the assessing officer. The same error has been committed by the first appellate authority also. The first appellate authority has accepted the penalty order passed by the assessing officer, without any valid reasons, without appreciation of the oral and documentary evidence and without recording any finding of fact as to how the penalty imposed on the Assessee is sustainable.

7. Further, it is significant to note that, the Tribunal has also committed a grave error and material irregularity in passing the order impugned. By merely recording the facts of the case, contentions of the parties and following the judgment of the Apex Court in Suresh Chandra Mittals case (supra), the Tribunal also slipped into an error in holding that, the penalty ought not to have been imposed on the Assessee. As rightly pointed out by learned Counsel for revenue, subsequent to the decision of Suresh Chandra Mittals case (supra), the Division Bench of this Court had an occasion to deal with the said aspect, and the Division Bench, relying on the decision of the Apex Court in K.P. Madusudhanans case (supra) has observed that the Tribunal was not right in cancelling the penalty u/s 271(1)(c) of the Act. Against the said judgment, the Assessee therein had filed a Special Leave Petition, which came to be dismissed by the Honble Supreme Court, holding that there is no reason to interfere in the judgment of the Division Bench. This aspect is not properly considered and dealt with by the Tribunal, may be due to lack of proper legal assistance by the learned Counsel who represented the parties.

8. Taking all these relevant aspects into consideration, we are of the considered opinion that all the three orders passed by the Assistant Commissioner of income tax, Bangalore, first appellate authority and the Tribunal cannot be sustained and are liable to be set aside and the matter requires reconsideration in accordance with law.

9. For the foregoing reasons, the appeal filed by Appellants is allowed in part. The impugned order dated 31-7-2002 passed by the Assistant Commissioner of income tax, Circle-9(1), Bangalore in F. No. P-74/ACIT-9(1)/2001-02 vide Annexure B, order dated 18-10-2002 passed by the Commissioner (Appeals)-IV, Bangalore in Appeal No. ITA.48/R-9/Commissioner (Appeals)IV/2002-03 vide Annexure C and the order dated 12-8-2004 passed by the Income Tax Appellate Tribunal, Bangalore Bench B in ITA No. 1670/Bang./2002 for the assessment year 1997-98, vide Annexure D, are all hereby set aside.

The matter stands remitted back to the assessing officer to reconsider the matter and pass to appropriate order in accordance with law and after affording reasonable opportunity of hearing to the parties and dispose of the same, in strict compliance of the relevant provisions of Section 271(1)(c) of the Act read with its explanation and after recording finding of fact regarding concealment of income or furnishing inaccurate particulars of income.