
(1988) 11 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 103 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Prithipal Singh and Co.

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (1990) 183 ITR 69

Hon'ble Judges : K.S. Bhalla, J;G.C. Mittal, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; None, for the Respondent

Judgement

K.S. Bhalla, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal, Amritsar, has referred the following two questions for the opinion of this court with regard to the assessment year 1970-71 concerning Prithipal Singh and Co., Ludhiana :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding :

(a) that the provisions of the Explanation to Section 271(1)(c) will not be attracted to the present case ?

(b) that the word "income" occurring in Clauses (c) and (iii) of Section 271(1) refers to a positive income only and not to a loss ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in cancelling the penalty order passed by the Inspecting Assistant Commissioner by holding that no penalty could be levied against the assessee ?"

2. The assessee, which was a firm existing in the assessment year 1970-71, filed its return for the said assessment year on September 30, 1970, declaring loss of

Rs. 3,35,830, The Income Tax Officer, vide his order, annexure "A", found that it was a case of concealment and suppression of income as the assessee had furnished inaccurate particulars of its income. He computed the assessee's income at Rs. 1,47,978 and, in the course of the assessment proceedings, started penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called "the Act"), for the reason that the assessee had grossly understated its income. The assessee went in appeal to the Appellate Assistant Commissioner against the order of the Income Tax Officer and the Appellate Assistant Commissioner determined the loss at Rs. 34,164 against the returned loss of Rs. 3,35,830, vide his order dated November 30, 1973, annexure "B". The penalty proceedings initiated by the Income Tax Officer were referred to the Inspecting Assistant Commissioner (Central), Ludhiana, u/s 274(2) of the Act and, vide his order, annexure "C", he imposed a penalty of Rs. 3,50,000 for concealment u/s 271(1)(c) of the Act for that assessment year. The assessee went in appeal to the Income Tax Appellate Tribunal against the imposition of penalty by the Inspecting Assistant Commissioner which was allowed, vide its order dated August 22, 1978, annexure "D", holding that no penalty could be imposed upon the assessee when it had returned a loss and it had also been assessed finally on a loss figure. Thereafter, the Commissioner of Income Tax (Central), Ludhiana, moved an application before the Income Tax Appellate Tribunal, Amritsar, which resulted in the present reference.

3. Penalty imposed is paid in addition to the tax payable. When there is no tax payable, the question of any penalty does not arise. In fact, evasion of tax is the sine qua non for imposition of penalty. Clause (iii) deals with cases referred to in Clause (c) under Sub-section (1) of Section 271 of the Act and it clearly provides therein that the penalty or further sum payable by a person would be in addition to any tax payable by him. Explanations 3 and 4 annexed to the said provision of law also presuppose taxable income with regard to the assessment year in question. If there is no taxable income or tax assessed for payment during a particular year, the question of evasion and consequently penalty do not arise. As is obvious from annexure "B", the assessee was assessed finally at a loss figure amounting to Rs. 34,164 as pointed out at page 33 of the record. Thus, there was no income and so the motive to avoid tax during the year in question is completely missing. May be, it may give a benefit to the assessee in the coming year as the loss could be carried forward but, by no stretch of imagination, can it be said that, during the assessment year in question, the assessee had concealed its income.

4. "Income" has been defined in Section 2(24) of the Act which clearly includes profits, gains, dividends or other benefits derived only, Loss cannot possibly be termed as income. u/s 139(1) of the Act, a person is required to furnish a return only if his total income during the previous year exceeded the maximum amount which is not chargeable to Income Tax. If the same falls short of the maximum amount which is not chargeable, which has been the case here as per final assessment, he need not file a return. A person who sustains a loss, however,

may file a return in view of Sub-section (3) of Section 139 of the Act if he wants to claim that the loss or any part thereof should be carried forward. The penal provisions of Section 271(1)(c), therefore, are attracted only in the case of an assessee having positive income and not loss, as the question of concealment of income to avoid payment of tax would arise only in the former case. Penalty is a deterrent measure to prevent evasion of tax and when there was no tax payable, there could not be any such evasion so as to provide a scope for levying any penalty. In the present case, only the loss has been reduced and it cannot be said that the assessee had suppressed any income which would have attracted liability to tax. The question of imposition of penalty, therefore, did not arise. Thus, on the facts and in the circumstances of the case, the Appellate Tribunal has acted rightly in law in holding that the provisions of the Explanation to Section 271(1)(c) will not be attracted to the present case. The word "income" occurring in Clause (c) and (iii) of Section 271(1) of the Act refers to positive income only and that no penalty could be levied against the assessee.

5. For the foregoing reasons, all the questions are answered in the affirmative, i.e., in favour of the assessee and against the Revenue. None having put in appearance on behalf of the assessee, no order for costs is made.