(2004) 04 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Income Tax C. No. 102 of 1996

Commissioner of Income Tax — APPELLANT

Vs

Rock Steel (P.) Ltd. — RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:
Income Tax Act, 1961 — Section 256, 272(1)

Citation : (2004) 271 ITR 463

Hon'ble Judges : N.K. Sud, J;Hemant Gupta, J

Bench : Division Bench

Advocate : N.L. Sharda, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sud, J.—The Revenue has filed this petition u/s 256(2) of the Income Tax Act, 1961 (for short the "Act"), seeking a direction to the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal"), to refer the following question of law said to arise out of its order dated April 4, 1995, whereby the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act has been cancelled on the ground that no positive income was assessed in the present case, for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that penalty is not exigible where loss is reduced resulting in the net assessed loss in spite of the fact that positive concealment was detected or the assessee had furnished deliberately inaccurate particulars to evade the tax ?"

2. Earlier, the Revenue''s petition u/s 256(1) of the Act requesting the Tribunal to refer the said question had been declined by the Tribunal vide order dated December 19, 1995.

3. The assessee had filed its return of income for the assessment year 1976-77 declaring a loss of Rs. 1,58,876. The Assessing Officer assessed the net loss at

Rs. 91,210 vide order dated February 20, 1979. The said assessment was set aside in appeal by the Commissioner of Income Tax (Appeals) to be made de novo. Accordingly, fresh assessment was made by the Assessing Officer vide order dated March 16, 1982, at a net loss of Rs. 73,730. The difference between the returned and assessed loss represented addition of Rs. 84,700 on account of understatement of stocks and goods, Rs. 13,500 on account of expenses disallowed being capital expenses and Rs. 5,000 on account of unexplained cash credit. The Assessing Officer initiated penalty proceedings u/s 271(1)(c) in respect of these disallowances/addition and levied penalty of Rs. 48,914.

4. On appeal the Commissioner of Income Tax (Appeals) cancelled the penalty on the ground that since there was no positive income assessed in the present case, it could not be said that any tax was sought to be evaded. The Revenue preferred an appeal before the Tribunal which was dismissed vide order dated April 4, 1995. The Tribunal while upholding the cancellation of penalty placed reliance on the judgment by this court in Commissioner of Income Tax Vs. Prithipal Singh and Co., which has since been affirmed by the apex court in Commissioner of Income Tax Vs. Prithipal Singh and Co., .

5. Since the order of the Tribunal is in conformity with the law laid down by the apex court, no referable question of law arises out of the order of the Tribunal for adjudication by this court. The petition is accordingly dismissed. Since no one has put in appearance on behalf of the respondent, there shall be no order as to costs.