

(2008) 02 P&H CK 0099
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Sanjiv Kumar

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Income Tax Act, 1961 — Section 143, 148, 256, 271, 273

Citation : (2008) 300 ITR 348

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Judgement

Satish Kumar Mittal, J.—Pursuant to the directions given by this court, vide order dated February 26, 2001, passed in I. T. C. No. 157 of 1996 filed by the Revenue, to draw up a statement of the case and refer the following substantial question of law to this court, the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the ITAT"), has referred the said question for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in cancelling the penalties levied u/s 271(1)(a), 273(2)(aa) and 271(1)(c) merely holding that since the entire addition made by the Assessing Officer has been deleted by the Income Tax Appellate Tribunal, there is no case for sustaining the penalties without appreciating the fact that reference application u/s 256(2) filed against the deletion of addition is pending before the hon'ble High Court for adjudication.

2. In the present case, for the assessment year 1981-82, the assessee filed its original return of income on August 24, 1981, declaring an income of Rs. 55,574. The assessment was completed u/s 143(3) of the Income Tax Act (hereinafter referred to as "the Act") on the declared income on September 30, 1983. Subsequently, the case was reopened u/s 148 of the Act on certain information when it was noticed that the assessee had understated the purchase price of 810 shares of M/s. Angoora Wool Combers Pvt. Ltd.

3. The Assessing Officer issued notice on May 10, 1985, to the assessee. Pursuant to the return filed by the assessee on February 19, 1986, the Assessing Officer initiated and levied penalty u/s 271(1)(a) for late submission of return. Penalty u/s 271(1)(c) was levied for concealment of income and also u/s 273(2) (aa) for default in payment of advance tax and for filing untrue estimate of the advance tax.

The Assessing Officer, after issuing notice u/s 148 of the Act, proceeded to make a fresh assessment and made an addition of Rs. 1,14,502 on account of undervaluation of the purchase price of shares. The value of each share was fixed at Rs. 149.36.

4. Feeling aggrieved against the aforesaid order, the assessee went in appeal which was partly allowed by the Commissioner of Income Tax (Appeals). Against that order, the assessee further filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal vide order dated June 5, 1990, deleted the entire addition while relying upon its earlier decision dated April 4, 1990, passed in I. T. A. No. 175 of 1986 in the case of Shri Dharam Pal and it was held that the issue involved regarding the price of the share was squarely covered by the said decision. In view of the said order, the assessee went in appeal against the levy of aforesaid three penalties with the plea that when the entire addition stands deleted, there was no case whatsoever for levy of penalty under any of the three different provisions of the Act. The Commissioner of Income Tax (Appeals) allowed the appeal and deleted all the penalties. The Revenue filed an appeal against the said order. The same was also dismissed by the Income Tax Appellate Tribunal while holding that after the entire addition was deleted, there was no case for sustaining the penalty under any of the three provisions of the Act. It has further held that since the very basis had disappeared, the levy of penalty was cancelled.

5. During the course of arguments, it has not been disputed that the addition made by the Assessing Officer on account of price of the share was deleted by the Income Tax Appellate Tribunal and that order has become final.

6. After hearing counsel for the Revenue and going through the reference as well as the finding recorded by the Income Tax Appellate Tribunal pertaining to the deletion of the addition made by the Assessing Officer as also the order deleting the penalty, we are of the opinion that once the entire addition has been deleted, then there remains no case for penalty whatsoever. The very basis of issuance of notice had disappeared. Once the addition was deleted, there was no requirement for the assessee to file the return showing higher income.

7. Admittedly, the present case is not a case of concealment of income nor the Revenue has been able to establish such fact. Therefore, in our opinion, the Income Tax Appellate Tribunal has rightly come to the conclusion that after the entire addition was deleted, there was no case for sustaining the penalty under any of the three provisions of the Act. Accordingly, the reference is answered

against the Revenue and in favour of the assessee.

8. Disposed of accordingly.