(2010) 07 DEL CK 0370

In the Delhi High Court

Case No : ITA 875 of 2010

Commissioner of Income Tax APPELLANT

Vs

Subhash Chand RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:
Income Tax Act, 1961 — Section 133A, 260A

Citation : (2010) 07 DEL CK 0370

Hon'ble Judges : Dipak Misra, C.J;Manmohan, J

Bench : Division Bench

Advocate : Sonia Mathur, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.

CM APPL. 11963/2010

This is an application for condonation of delay of 76 days in refiling the appeal.

For the reasons stated in the application, delay of 76 days in refiling the appeal is condoned.

Accordingly, application stands disposed of.

ITA 875/2010

1. The present appeal has been filed u/s 260A of Income Tax Act, 1961 (for brevity "Act 1961") challenging the order dated 30th April, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA 4246/Del/2005.

2. Ms. Sonia Mathur, learned Counsel for appellant submits that both the ITAT and Commissioner of Income Tax (Appeals) (in short "CIT(A)") have erred law in deleting the addition of Rs. 10,83,540/- made by the assessing officer on account of surrender made by the assessee during the course of survey u/s 133A of Act, 1961.

3. Briefly stated the material facts of the case are that on 08th March, 2002, a survey operation was conducted on the assessee''s business premises u/s 133A of the Act, 1961. During the course of survey, stock inventory, trading account and inventory of cash was prepared and the statement of assessee was recorded. On the basis of assessee''s admission, the assessing officer made addition of Rs. 10,83,540/- to the income declared. The addition consisted of Rs. 7,03,540/- on account of excess stock, Rs. 2,75,000/- on account of showroom renovation and Rs. 1,05,000/- on account of excess cash found.

4. However, immediately thereafter, on 13th March, 2002 assessee withdrew the admission and stated that there was neither excess cash nor stock or expense incurred on renovation.

5. Both the CIT(A) and ITAT have found that assessee had filed books of accounts along with necessary supporting evidence like sale/purchase bills, cash books and ledger etc. They have further found that books result have been rejected by the assessing officer on the sole reason that the purchase bills had not been produced; even though as per letters dated 13th March, 2002 and 22nd January, 2003, the purchase bills had been filed. Consequently, according to ITAT, the assessing officer could not have rejected the books results. In fact, the ITAT has, in the impugned order, concluded as under:

We, therefore, hold that no credence can be given solely to the admission during survey for the purpose of making addition. The assessee has demonstrated that there was neither excess stock nor excess cash nor any expenditure on furniture or renovation etc. We, therefore, uphold the order of the learned CIT(A).

6. We are of the opinion that in law an assessee is entitled to explain his admission. In the present case, the assessee has duly supported his retraction with the book results by filing necessary evidence. Since in the present case, there is neither any finding that the book results are unreliable and/or that any investment has been made in renovation of showroom, we are of the opinion that no substantial question of law arises in the present appeal.

7. Accordingly, appeal is dismissed in limine but with no order as to costs.