

(2006) 04 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : IT Ref. No's. 98 and 99 of 1987

Commissioner of Income Tax

APPELLANT

Vs

Suraj Bhan

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Citation : (2006) 203 CTR 230 : (2007) 294 ITR 481

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

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

Judgement

1. Following question of law has been referred for our opinion by the Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dt. 31st Dec., 1976 passed in ITA Nos. 263 and 264 of 1975-76, in respect of asst. yrs. 1969-70 and 1970-71 :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the-penalty of Rs. 25,515 and Rs, 45,680 imposed by the IAC u/s 271(1)(c) of the IT Act, 1961 for asst. yrs. 1969-70 and 1970-71 respectively ?

2. The assessee is a wine contractor. He derives income from property, personal business and share income. He filed his return of income declaring loss of Rs. 8,410. In the balance sheet, cash balance and personal capital were shown as Rs. 3,090 and Rs. 29,341 for the asst. yr. 1969-70. For the asst. yr. 1970-71, return of income was filed declaring the income at Rs. 11,451, while in balance sheet, cash and credit balance in the capital account were shown as Rs. 2,248 and Rs. 43,963. A search took place in the premises of the assessee on 28th Nov., 1970 and certain books of account were seized, apart from cash amounting to Rs. 33,000. The assessee revised his balance sheet, raised cash balance, revised other entries and thereafter filed revised returns with the Department.

3. Proceedings were initiated u/s 271(1)(c) of the IT Act, 1961 (for short, "the Act") for furnishing inaccurate particulars. In his reply, the assessee took the plea that surrender of amounts for purpose of assessment was made bona Me and no inference of admission of concealment could be drawn. The AO imposed penalty of Rs. 25,515 and Rs. 45,680. The Tribunal deleted the penalty for the reasons mentioned in para 8 of its order. It was observed that the assessee discharged the onus in terms of Explanation to Section 271(1)(c) of the Act and since there was no evidence except the revised return filed by the assessee to show that the disputed amounts constituted assessee's income in two years in question, preponderance of probability was in favour of the assessee.

4. We have heard learned Counsel for the Revenue. None appeared for the assessee.

5. Relevant observations from para 8 of the order of Tribunal, are quoted below :

8...There are two probabilities pointed out by the assessee in this case. One probability is that the amounts which have been subjected to tax in these two years really did not constitute the assessee's income because the assessee had been doing business for the past many years and it was only for lack of evidence that such a contention could not be established. The second probability is that a part of the money on which tax was levied in these two years belonged to his sons. The preponderance of probability is in favour of the assessee. Thus, we find that penalty is not exigible even with reference to the Explanation to Section 271(1)(c).

6. In view of finding of the Tribunal that explanation of the assessee was satisfactory and burden had been discharged by the assessee, even if two views are possible, the said finding cannot be held to be perverse. We also find that in Commissioner of Income Tax Vs. Suresh Chandra Mittal, , the Hon''ble Supreme Court observed that when an assessee files a revised return showing higher income and gives an explanation that he offered higher income to buy peace of mind and avoid litigation, penalty cannot be imposed merely on account of higher income having been subsequently declared.

7. In view of binding precedent of Hon''ble the Supreme Court of India, which is squarely applicable to the facts and circumstances of the case, the question of law referred to this Court is answered against the Revenue and in favour of the assessee.