
(2001) 10 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : Income Tax C. No's. 35 to 38 of 1998 and 52 to 56 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Suresh Kumar Bansal and Another

RESPONDENT

Date of Decision : 22-10-2001

Acts Referred:

Income Tax Act, 1961 — Section 132, 256, 271(1)

Citation : (2002) 254 ITR 130

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Jaishree Thakur, for the Appellant; Sumeet Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The Revenue has filed these nine petitions u/s 256(2) of the Income Tax Act, 1961. These relate to the imposition of penalty against the respondent-assessee for the assessment years 1979-80 to 1987-88. The Revenue maintains that the following question of law arises in I. T. C. Nos. 35 to 38 of 1998 and that the Tribunal should be directed to refer it to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the order of the learned Commissioner of Income Tax (Appeals) who cancelled the penalty imposed u/s 271(1)(c) of the Income Tax Act by the Assessing Officer ?"

2. The admitted facts are that the assessments in respect of different years had been completed u/s 143(3) of the Act of 1961. Thereafter, the premises of the assessee were raided in July, 1987. The assessments were reopened. Fresh orders of assessment were passed. Penalty proceedings were initiated. In respect of the four years in question, penalties amounting to Rs. 2,470, Rs. 3,962, Rs. 19,830 and Rs. 37,568 were imposed. Aggrieved by the orders of penalty the

assessee filed appeals. The Commissioner of Income Tax (Appeals) found that the assessee had surrendered certain amounts, subsequent to the discussions with the officers and subject to no penalty. It was further found that "the Assessing Officer has not pointed out any specific items of concealment in the penalty order and has simply levied the penalty keeping in view the original income and reassessed income." Thus, the orders of penalty were annulled.

3. Aggrieved by the orders of the appellate authority, the Revenue filed appeals before the Tribunal. The appeals were dismissed. Then petitions u/s 256 of the Act were filed. These were also dismissed. Hence, the present petitions.

4. Mr. Sawhney, learned counsel for the Revenue, contends that the Assessing Officer had found as a fact that the assessee had concealed the income. Thus, the levy of penalty was legal and valid.

5. We have perused the orders passed by the Assessing Officer. Learned counsel is unable to refer to any finding that the assessee had concealed the income. In fact, the Assessing Officer had fixed the assessable income by estimate. Still further, no reference has been made to any material on the file in the order to show that the assessee had really concealed the income or that the declaration regarding additional income had not been made by the assessee to buy peace. In this situation, we are not surprised that the Tribunal had found no ground to sustain the penalty imposed by the Assessing Officer. Equally, the Tribunal was justified in holding that no question of law arises for the opinion of this court.

6. The remaining five cases, viz., I. T. C. Nos. 52 to 56 of 1999 relate to the assessment years 1983-84 to 1987-88. In these cases, the Revenue has raised the following question and prays that the Tribunal be directed to refer it to this court for opinion :

"Whether, the Income Tax Appellate Tribunal was right in law, under the facts and circumstances of the case, in confirming the order of the learned Commissioner of Income Tax (Appeals), who cancelled the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961, by the Assessing Officer, particularly when the assessee had not made any surrender of income during the course of search operations nor unaccounted income was declared in the return of income filed by him in response to notice u/s 147/148 of the Income Tax Act, 1961, but which was declared through a letter subsequently during the assessment proceedings and the assessee failed to discharge initial onus under Explanation 1 to Section 271(1) (c) of the Income Tax Act ?"

7. In this case, the Tribunal has found that the penalties had been imposed as under:

SI. No.

Assessment year

Date of order under section 271(1)(c)

Amount of penalty

Rs.

1.

1983-84

27-7-1990

29,000

2.

1984-85

27-7-1990

1,15,000

3.

1985-86

27-7-1990

72,000

4.

1986-87

27-7-1990

66,000

5.

1987-88

16-8-1990

2,35,000

8. In these cases also, the appeals of the assessee challenging the order of penalty were accepted by the Commissioner of Income Tax (Appeals) vide order dated April 1, 1991. In this behalf, the Commissioner had, relied upon the decision in The Commissioner of Income Tax Madras Vs. Khoday Eswarsa and Sons, and Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh, . It was observed that "the considerations that arise in penalty proceedings are different from those in assessment proceedings." It was further noticed that most of these expenses are of estimated nature or other such additions which ordinarily would not have attracted penalty u/s 271(1)(c). This order was confirmed by the Tribunal. Reliance was also placed on the order passed by it in respect of the assessment years 1979-80 to 1982-83. It was held

that the penalties "in the above assessment years were levied in identical circumstances ..."

9. Despite being asked learned counsel is unable to refer to any evidence or finding which may show that the assessee had concealed its income and that the penalty was imposed on detection thereof.

10. u/s 271(1)(c) of the Act the penalty can be imposed only when it is found that the assessee "has concealed the particulars of his income or furnished inaccurate particulars of such income". In these cases, it has not been shown that the assessee had concealed the particulars of any income or furnished inaccurate particulars thereof.

11. Mr. Sawhney has referred to the assessment order passed by the Assessing Officer. A perusal thereof shows that the assessment has been made on the basis of "estimate". No categorical finding regarding concealment is shown to have been recorded. Still further, even while imposing the penalty, no definite finding that the assessee had concealed the particulars of any income, or that it had furnished inaccurate particulars, is shown to have been recorded.

12. Mr. Sawhney has referred to the decision of a Division Bench of this court in *Mahavir Metal Works Vs. Commissioner of Income Tax*, . Even in this case it was held that "penalty proceedings being of penal nature, it is for the Income Tax Department to establish that the assessee was guilty of concealment of particulars of his income". The rest was a decision on the facts of the case. Still further, it deserves mention that Mr. Mahajan has referred to the decision of their Lordships of the Supreme Court in *Commissioner of Income Tax Vs. Suresh Chandra Mittal*, . In this case the plea of the assessee that "he had offered additional income to buy peace of mind and avoid litigation" was accepted by the High Court and the appeal filed by the Revenue was dismissed by their Lordships of the Supreme Court. Similar is the position in the present set of cases.

13. Mr. Sawhney has also drawn our attention to the decision of the apex court in *Union of India and Another Vs. Banwari Lal Agarwal*, . This case related to the prosecution of the assessee on account of delay in filing the returns. This case has no relevance to the facts of the present case.

14. No other point has been raised.

15. In view of the above, we find that the Tribunal has decided these cases on appreciation of the evidence on record. No question of law, which may require an expression of opinion by this court, arises in these cases. Consequently, the petitions are dismissed. The parties are, however, left to bear their own costs.