

(2004) 02 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : Income Tax A. No. 140 of 2003

Commissioner of Income Tax

APPELLANT

Vs

Ved Prakash

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(3), 148, 260A, 271(1)(C)

Citation : (2005) 193 CTR 95 : (2004) 269 ITR 255 : (2004) 141 TAXMAN 377

Hon'ble Judges : N.K. Sood, J;J.S. Narang, J

Bench : Division Bench

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

Judgement

N.K. Sud, J.

CM No. 1473-CII of 2003 :

1. This application has been filed for condonation of delay in refiling the appeal.

C. M. is allowed. Delay in refiling the appeal is condoned.

I. T. A. No. 140 of 2003 :

2. The Revenue has filed this appeal u/s 260A of the Income Tax Act, 1961 (for short "the Act"), against the order of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short "the Tribunal"), dated January 30, 2003, dismissing its appeal, against the order of the Commissioner of Income Tax (Appeals) (for short "the CIT(A)") cancelling the penalty levied u/s 271(1)(c) of the Act

3. The facts which are relevant for resolving the controversy and are not in dispute are that the assessee filed its return of income for the assessment year 1988-89 on November 10, 1988, showing an income of Rs. 16,420. On the basis of that return, the assessment was completed u/s 143(1) of the Act on January 18, 1989. Thereafter, on investigations conducted by the Assistant Director of Income Tax (Investigation), Bathinda (for short "the ADIT"), it was found that

the assessee had purchased the following drafts but the same were reflected in the books of account on subsequent dates :

Date of purchase	Amount of draft	Date of entry in books of account
		4-4-1987
70,566	6-4-1987	11-3-1988 1,00,000 16-3-1988 12-3-1988 85,769 22-3-1988

4. While the proceedings before the ADIT were on, the assessee furnished another return on March 7, 1991, suo motu at an income of Rs. 2,02,190 by including the peak investment of Rs. 1,85,769 in the bank drafts to the originally returned income of Rs. 16,420. Assessment on this return was also made u/s 143(1) of the Act on March 11, 1991.

5. Subsequently, the ADIT forwarded his report to the Assessing Officer, Muktsar, who on the basis of the said report, issued notice u/s 148 of the Act on January 28, 1992. In response to the said notice, the assessee filed another return on February 4, 1993, declaring an income of Rs. 2,02,190 which was the income declared by him in the earlier return filed on March 7, 1991. This return was filed under protest as the assessee claimed that no income had escaped assessment. The assessee's objection was overruled and assessment on the basis of this return was made u/s 143(3) of the Act on March 7, 1994, at the income of Rs. 2,02,190 which was the income disclosed in the return. While completing the assessment, the Assessing Officer also initiated penalty proceedings u/s 271(1) (c) of the Act for concealment of income.

6. On receipt of a show cause notice, the assessee contended that no penalty was leviable as he had voluntarily disclosed the undisclosed income in the revised return on March 7, 1991, much before the Assessing Officer had issued any notice to him. It was further explained that the issuance of notice u/s 148 of the Act on January 28, 1992, was itself invalid as no income had escaped assessment on that date. The assessee's explanation was, however, rejected and the Assessing Officer levied a penalty of Rs. 1 lakh u/s 271(1)(c) of the Act vide order dated June 27, 1994.

7. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) which was allowed vide order dated November 11, 1996. The Commissioner of Income Tax (Appeals) observed that the assessee had voluntarily filed the return on March 7, 1991, on the basis of which the Assessing Officer had completed the assessment on March 11, 1991, at an income of Rs. 2,02,190. He also noticed that in response to the notice u/s 148 of the Act, the assessee had filed the return on February 4, 1993, under protest declaring his income at the same figure of Rs. 2,02,190 and the Assessing Officer had again framed the assessment at the same figure on March 7, 1994. Accordingly, the Commissioner of Income Tax (Appeals) was of the view that since there was no variance of income in both the situations, i.e., vide

assessment order dated March 11, 1991, and assessment order dated March 7, 1994, there was no scope for levy of penalty in pursuance of the assessment order dated March 7, 1994. The Commissioner of Income Tax (Appeals), accordingly, cancelled the penalty.

8. The Revenue preferred an appeal before the Tribunal which has been dismissed vide the impugned order in the following terms :

"4. We have heard both the parties at length and have also gone through the* orders of the authorities below. At the very outset, we may point out the order of the learned Commissioner of Income Tax (Appeals) is based on correct appreciation of facts and law and, therefore, no interference is called for. It is an admitted position that the assessee filed a voluntary return on March 7, 1991, on the basis of which the Assessing Officer completed the assessment and the assessee paid tax thereon as determined by the Assessing Officer. It is further clear that the Assessing Officer had not initiated penalty proceedings while processing the return u/s 143(1) of the Income Tax Act, 1961, it is true that in response to the notice u/s 148 the assessee had filed the return on February 4, 1993, declaring income on the same figure of Rs. 2,02,190 and the Assessing Officer, framed the assessment at the same figure u/s 143(3) of the Act.

We are fully in agreement with this observation of the learned Commissioner of Income Tax (Appeals) that notice u/s 148 was issued after a span of 9 months and 28 days from the receipt of the report of the ADIT and in the meanwhile, the Assessing Officer had already made thorough inquiries from the banks regarding the purchase of drafts by the assessee. It seems that at the time when the report of the ADIT was received the Assessing Officer was not definite whether any concealment had taken place or not. It is also seen that the basis for issue of notice u/s 148 was nothing but the disclosure of income by the assessee on March 7, 1991, by filing a voluntary return. In fact the Assessing Officer detected nothing before filing of the return in response to notice u/s 148 of the Income Tax Act.

The net result of the above discussion is that the order of the learned Commissioner of Income Tax (Appeals) requires no interference at our level and accordingly we uphold the same."

9. A bare perusal of the findings recorded by the Commissioner of Income Tax (Appeals) and the Tribunal shows that the entire undisclosed income in respect of which penalty has been imposed had been disclosed in the return filed by the assessee voluntarily on March 7, 1991. Assessment on the basis of this return was framed u/s 143(1) of the Act on March 11, 1991. No penalty proceedings had been initiated at that time. Once the entire amount stood assessed, there was no scope for issue of a fresh notice u/s 148 of the Act to assess the same income once again. Penalty proceedings during the course of subsequent reassessment proceedings could only be initiated if the Assessing Officer had discovered any undisclosed income over and above the income which had already

been assessed vide order dated March 11, 1991. A notice u/s 148 of the Act can only be issued to bring to tax any income which had earlier escaped assessment. In the present case, it is evident that vide order dated March 7, 1994, the income was assessed at the same figure of Rs. 2,02,190, which was the income assessed vide order dated March 11, 1991. There was, thus, no additional income assessed vide order dated March 7, 1994, warranting notice u/s 271(1) (c) of the Act.

10. In view of the above, we are satisfied that no substantial question of law arises out of the order of the Tribunal for consideration by this court. The appeal is, accordingly, dismissed in limine.