(2007) 04 BOM CK 0122

In the Bombay High Court

Commissioner of Income Tax — APPELLANT

Vs

Vikas Engineering Corporation — RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (2007) 04 BOM CK 0122

Hon'ble Judges : J.P. Devadhar, J;B.P. Dharmadhikari, J

Bench : Division Bench

Judgement

J.P. Devadhar, J.—This application filed by the revenue u/s 256(2) of the Income Tax Act, 1961 relating to the assessment year 1983-84 is filed against the order of the Tribunal dated 5-11-1993, in R. A. No. 377/Nag/93. This application was admitted on 15-4-1998, on the following questions of law:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding the order of the Commissioner (Appeals) in cancelling the penalty imposed by the assessing officer u/s 271(1)(c) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that from the details of stock collected by the department and as given by the assessee to the bank, it is possible to hold a view that many of the items so shown had no such intrinsic value?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that it is also a fact that it is a common phenomena that the assessees show higher value of the stock in their possession with a view to obtain higher loans. This fact cannot be relied upon by the department for imposition of penalty for concealment of income ?

4. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the Central Board of Direct

Taxes Circular No. 451 dated 17-2-1986, (see (1986) 158 ITR 135 is applicable to the facts of this case ?

5. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that till the assessee made the offer of Rs. 5.50 lakhs to the department, the department had only the prima facie belief that there was concealment of income and there was no concrete material on record to prove that any concealment was positively found out by the department ?

6. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the entire conduct of the assessee and the department leads to a conclusion that there was an understanding between the assessee and the department regarding the assessment and non-imposition of penalty proceedings u/s 271(1)(c) of the Act ?

7. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the decision of Supreme Court in the case of Commissioner of Income Tax Vs. Mussadilal Ram Bharose, is applicable to the facts of the case ?

2. The assessee derives the income from the manufacture and sale of fabricated iron goods. During the course of assessment proceedings relating to the assessment year 1983-84, the assessing officer on an enquiry from the bank found that the stock statement submitted by the assessee was much higher than the stock statement submitted to the Income Tax Officer. On being called upon to explain the discrepancy in the stock, the assessee by its letter dated 24-3-1986, replied that there was no discrepancy in the stock, because the statement submitted to the bank on only estimated basis and not based on the books maintained by the assessee. However, at the instance of the assessing officer the assessee surrendered a sum of Rs. 5.50 lakhs on 31-3-1986, in view of the amnesty scheme and the circular of the Central Board of Direct Taxes dated 17-2-1986. The assessing officer passed the assessment order dated 31-3-1986, accepting the amount of Rs. 5.50 lakhs offered by the assessee against the excess stock of Rs. 18 lakhs noticed by the assessing officer. Penalty was also levied u/s 271(1)(c) of the Act.

3. Being aggrieved by the penalty order, the assessee filed an appeal before the Commissioner (Appeals) and stating therein that the discrepancy in the two statements have been properly explained by the assessee and additional amount has been offered only with a view to buy peace as per the amnesty scheme. The Commissioner (Appeals) deleted the penalty in view of the Circular No. 451 dated 17-2-1986, (see (1986) 158 ITR 135 There is no finding recorded by the Commissioner (Appeals) as to whether the explanation given by the assessee was acceptable or not. The revenue filed an appeal but the same was dismissed by the Tribunal. Thereafter, the reference application filed u/s 256(1) was also rejected. Hence, this application by the revenue u/s 256(2) of the Act.

4. In the present case, during the course of assessment the excess stock noticed was to the extent of Rs. 18 lakhs. Although the assessee had offered explanation regarding the discrepancy, in the absence of any finding either accepting or rejecting the explanation whether the penalty could be deleted on the basis of the amnesty scheme, is the question which needs consideration.

5. In this view of the matter, we allow this application on the following 5 questions of law:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding the order of the Commissioner (Appeals) in cancelling the penalty imposed by the assessing officer u/s 271(l)(c) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the Central Board of Direct Taxes Circular No. 451 dated 17-2-1986, (see (1986) 158 ITR 135 is applicable to the facts of this case ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that till the assessee made the offer of Rs. 5.50 lakhs to the department, the department had only the prima facie belief that there was concealment of income and there was no concrete material on record to prove that any concealment was positively found out by the department ?

6. The Tribunal is directed to forward the statement of case as expeditiously as possible. Rule is made absolute, with no order as to costs.

