(2009) 07 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax I — APPELLANT

Vs

Sidhartha Enterprises — RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Income Tax Act, 1961 — Section 260A, 271, 276C, 50, 71

Citation : (2010) 228 CTR 579 : (2009) 184 TAXMAN 460

Hon'ble Judges : Daya Chaudhary, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—The revenue has preferred this appeal u/s 260-A of the Income Tax Act, 1961 (in short, ''the Act'') against the order of the Income Tax Appellate Tribunal, Chandigarh, passed in ITA No. 136/CHD/2008 dated 30.5.2008, for the assessment year 2005-06, proposing to raise following substantial questions of law, for opinion of this Court:

(i) Whether on the facts and in law, the Hon''ble Income Tax Appellate Tribunal was justified in law in dismissing the appeal of the department by deleting the penalty u/s 271(1)(c) imposed by the Assessing Officer ''for furnishing inaccurate particulars of income'' as in view of provisions of Section 50 and 71(3) of the Income Tax Act, 1961 loss on sale of machinery being capital loss could not be set off against any other head of income?

(ii) Whether on the facts and in the circumstances of the case, the Hon''ble ITAT was justified in law in giving a finding that the mistake has been committed by the counsel and that there was no scope for concealing any income or furnishing of inaccurate particulars of income?

2. The assessee in its return claimed set off on account of capital loss against profits of business, which was disallowed and penalty proceedings were initiated. Finally, penalty was imposed for ''furnishing inaccurate particulars''. The CIT(A) deleted the penalty holding that set off was claimed by counsel''s negligence

which view was upheld by the Tribunal. The Tribunal observed as under:"

8. We have given our careful consideration to the rival contentions. Whether the assessee has concealed the income or furnished inaccurate particulars of income depends on the facts and circumstances of each case. In this case, the assessee has suffered a loss on the sale of machinery which has been disclosed in the statement of accounts filed alongwith the return. There is no allegation about the incorrectness of loss on the sale of machinery. The mistake committed by the counsel for assessee is that the loss suffered on the sale of machinery has been adjusted against the profits of business. Whether the loss on sale of machinery is adjustable against the profits of business or not has got to be determined with reference to the provisions of the Act. The Assessing Officer has found that the loss suffered on sale of machinery is not allowable to be set off against the profits of business. He has confronted the assessee and the assessee on realizing the mistake committed by the counsel, has accepted the decision of the Assessing Officer in disallowing the loss. In our considered view, the facts and circumstances of this case do not justify an inference that the assessee has concealed the income or furnished inaccurate particulars of income. The mistake has been committed by the counsel of the assessee and the entire facts had been disclosed by the assessee in the documents filed alongwith the return. There was no scope for concealing any income or furnishing of inaccurate particulars of income.

3. We have heard learned Counsel for the revenue.

4. Learned Counsel for the revenue submits that even if claim of set-off of capital loss against profits of business was by negligence or mistake, the fact remains that the particulars of income furnished were not correct and willful concealment not being an essential requirement for levy of penalty u/s 271(1)(c) of the Act, as held by the Hon''ble Supreme Court in Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, , the penalty could not be deleted.

5. We are unable to accept the submission. The judgment of the Hon''ble Supreme Court in Dharmendra Textile (supra) cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. What has been laid down is that qualitative difference between criminal liability u/s 276C and penalty u/s 271(1)(c) had to be kept in mind and approach adopted to the trial of a criminal case need not be adopted while considering the levy of penalty. Even so, concept of penalty has not undergone change by virtue of the said judgment. Penalty is imposed only when there is some element of deliberate default and not a mere mistake. This being the position, the finding having been recorded on facts that the furnishing of inaccurate particulars was simply a mistake and not a deliberate attempt to evade tax, the view taken by the Tribunal cannot be held to be perverse.

6. Substantial questions of law proposed in the appeal do not, thus, arise for consideration.

7. The appeal is dismissed.