(1996) 01 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No''s. 54 and 55 of 1987

Dalu Ram Ram Chander APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 24-01-1996

Acts Referred:

Income Tax Act, 1961 — Section 139(8), 148, 256, 271(1)
Income Tax Rules, 1962 — Rule 117A

Citation : (1996) 135 CTR 188 : (1996) 220 ITR 560

Hon'ble Judges : N.K. Sodhi, J;Ashok Bhan, J

Bench : Division Bench

Advocate : M.L. Puri, for the Appellant; Aradhana Sawhney, for the Respondent

Judgement

N.K. Sodhi, J.—This order will dispose of two connected Income Tax Cases Nos. 54 and 55 of 1987 pertaining to the same assessee in which identical questions of law and fact arise.

2. The assessment years in question are 1974-75 and 1975-76, corresponding to the previous years ending on March 31, 1974, and March 31, 1975, respectively. The assessee did not file its returns of income for these years within the period stipulated u/s 139 of the Income Tax Act, 1961 (for short, "the Act"), and the same were filed on December 26, 1976, only on receipt of a notice u/s 148 and, therefore, the Income Tax Officer, while framing assessments, levied interest of Rs. 36,800 and Rs. 9,672 u/s 139(8) of the Act for these years. An application under Rule 117A of the ''income tax Rules, 1962 (hereinafter called "the Rules"), was filed by the assessee with a request that the interest levied may be waived as according to it, it was prevented by sufficient cause from furnishing the returns within time. The explanation furnished for not filing the returns in time was that one of the partners of the assessee-firm who was taking the account books for the period 1966-67 up to 1973-74 from Moga to Ferozepur lost them on the way on April 19, 1974, and it is stated that a first information report regarding loss was lodged with the police at Ferozepur and an intimation to this

effect was also sent to the Income Tax Officer along with a copy of the first information report.

3. It was on account of loss of the account books, claims the assessee, that it could not file its Income Tax return in time for the relevant assessment years and it took a long time in reconstructing the same which caused delay in the filing of the returns. This explanation was accepted by the Income Tax Officer who, as per his order dated March 28, 1984, referred the case for approval to the Inspecting Assistant Commissioner of Income Tax, Jalandhar, for waiver/ reduction of interest. Considering the facts as stated by the Income Tax Officer in his letter seeking approval, the Inspecting Assistant Commissioner of Income Tax accorded his approval consequent upon which the interest levied for the assessment year 1974-75 was waived and for the year 1975-76, it was reduced by 50 per cent.

4. Since the returns were belatedly filed, the Income Tax Officer initiated penalty proceedings u/s 271(1)(a) of the Act for both the assessment years and levied sums of Rs. 65,710 and Rs. 15,400 for the assessment years 1974-75 and 1975-76, respectively. Feeling aggrieved by the order imposing penalty, the assessee filed two appeals before the Commissioner of Income Tax (Appeals) which were disposed of by a common order dated September 10, 1984. The order imposing penalty was confirmed though, according to the appellate authority, the Income Tax Officer had not properly calculated the period for which the penalty was leviable for the assessment year 1975-76. The appeals were partly allowed and the Income Tax Officer was directed to recalculate the amount of penalty in terms of the directions issued by the appellate authority. Still not satisfied with the appellate order, the assessee filed two appeals before the Income Tax Appellate Tribunal which were dismissed on March 16, 1986 (annexure "P-11" with the paper book), and the orders levying penalty affirmed. The applications filed by the assessee for a reference to this court u/s 256(1) having been dismissed by the Tribunal, the present petitions were filed u/s 256(2) for a direction to the Tribunal to refer to this court the questions of law, which, according to the assessee, arise from the order dated March 16, 1986.

5. We have heard counsel for the parties. There is no gainsaying the fact that the Income Tax Officer, while waiving the interest under Rule 117A, had accepted the explanation of the assessee and was of the opinion that it was prevented by sufficient cause from furnishing the returns within time. The argument of learned counsel, appearing on behalf of the assessee, is that curiously enough, the Income Tax authorities including the Tribunal have not accepted the same explanation for the purpose of levying penalty u/s 271(1)(a) of the Act which they should have. He relied upon a decision of the Karnataka High Court in S. Govindaraju v. CIT [1982] 158 ITR 495.

6. Without going into the merits of the contentions advanced before us, we are of the opinion that the following question of law docs arise from the order of the Tribunal :

"Whether, on the facts and circumstances of the case, the Tribunal was right in rejecting the explanations furnished by the assessee for late filing of the returns when the same explanations had been accepted by the Income Tax Officer while waiving interest under Rule 117A ?"

7. Accordingly, we direct the Tribunal to state the case and refer the aforesaid question of law to this court for its opinion. The applications stand allowed with no order as to costs.

