
(2008) 05 PAT CK 0052
In the Patna High Court

Dr. Ajith Kumar Pandey

APPELLANT

Vs

Income Tax Appellate Tribunal

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Citation : (2008) 05 PAT CK 0052

Judgement

1. The writ petitioner preferred an appeal to the Income Tax Tribunal. This appeal was in respect of levy of penalty u/s 271 of the Income Tax Act, 1961. The appeal was presented with court fee of Rs. 500. The same was decided ex parte. The petitioner then approached the Tribunal for recalling of the ex parte order. The Tribunal was agreeable to recall the ex parte order and to decide the appeal of the writ petitioner on the merits, provided the writ petitioner was agreeable to furnish deficit court fee of Rs. 8,330. The petitioner contended before the Tribunal that in respect of the appeal preferred by the petitioner court fee of Rs. 500 only is payable and such court fee have been paid, the question of the petitioner paying anything more does not arise. The Tribunal felt that the contentions of the petitioner are not acceptable in view of the decision of the Special Bench of the Income Tax Appellate Tribunal, Kolkata, rendered in the case of (2005) 92 ITD 148

2. Liability to pay court fee for preferring an appeal to the Appellate Tribunal has been imposed by Sub-section (6) of Section 253 of the Income Tax Act, 1961. The said sub-section is reproduced below:

253. (6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of,--

(a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,

(b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,

(c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent, of the assessed income, subject to a maximum of ten thousand rupees,

(d) where the subject-matter of an appeal relates to any matter, other than those specified in Clauses (a), (b) and (c), five hundred rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in Sub-section (2) or a memorandum of cross-objections referred to in Sub-section (4).

3. A look at the sub-section would make it abundantly clear that in the case an appeal is filed on or after October 1, 1998, the appeal must be accompanied by a fee of what has been provided in Clauses (a), (b), (c) and (d) of the said sub-section. Clauses (a), (b) and (c) provides that fees as mentioned therein should be determined on the basis of total income of the assessee as mentioned in those clauses. Therefore, in the case of an appeal where the total income of the assessee is ascertainable from the appeal itself, i.e., when the appellant is seeking to challenge the assessment of his total income, fees as mentioned in Clauses (a), (b) and (c) would be required to be paid. Clause (d) of the sub-section deals with other appeals. Imposition of penalty u/s 271 of the Income Tax Act, 1961, has no connection or bearing with the total income of the assessee. A person aggrieved by an order imposing penalty, if approaches the Tribunal by preferring an appeal, imposition of penalty, having no nexus with the total income of the assessee, it would not be discernible what is the total income of the appellant and, accordingly, such an appeal will be covered by Clause (d). Furthermore, the important words used in Clauses (a), (b) and (c) of the sub-section are "total income of the assessee". Therefore, the appellant must be an assessee and the appeal must demonstrate what is his total income. In the case of imposition of penalty that may not be discernible.

4. We, therefore, hold that the order passed by the Special Bench of Income Tax Appellate Tribunal, Kolkata, referred to above, is not convincing and, accordingly, the Tribunal erred in following the ratio contained therein. The order of the Tribunal is, accordingly, set aside and the matter is remitted back to the Tribunal with a direction upon it to consider the appeal of the petitioner on the merits proceeding on the basis that appropriate court fees have been paid therefor.