(2008) 01 AHC CK 0033

In the Allahabad High Court

Dy. Commissioner of Income Tax APPELLANT

Vs

Associated Journals Ltd. RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:
Income Tax Act, 1961 — Section 143, 260A, 271

Citation : (2008) 01 AHC CK 0033

Hon'ble Judges : S.S. Chauhan, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present Income Tax Appeal filed u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as - the Act) has been admitted vide order dated 1-9-2007 on the following substantial question of law:

Whether, the Tribunal has erred in law by holding that as the assessed income was a loss therefore, there was no case made for levy of penalty u/s 271(1)(c), despite the fact that the Bombay High Court in the case of Commissioner of Income Tax Vs. Chemiequip Ltd., has held that after the legislative amendments carried out to the provision of Section 271(1)(c) penalty u/s 271(1)(c) was exigible in loss cases.

2. Briefly stated the facts giving rise to the present appeal are as follows:

The respondent-assessee is a Public Limited Company and is engaged in the business of printing and publishing of newspapers and journals, etc. For the assessment year 1991-92 the assessee had filed its return of loss of Rs. 1,22,97,522. The assessment was completed u/s 143(3) of the Act on 20-9-1993 on a total loss of Rs. 59,39,045 as against the returned loss of Rs. 1,22,97,522. As the amount of loss was reduced in the assessment proceeding, the proceedings u/s 271(1)(c) of the Act for imposition of penalty for concealment was initiated. The Deputy Commissioner of Income Tax, Special Range-Ill, Lucknow vide order dated 26-2-1996 after considering the explanation given by the assessee imposed a sum of Rs. 13,76,302 as penalty. Feeling aggrieved the assessee preferred an appeal before the Commissioner (Appeals) who vide order dated 4-9-1996 allowed the appeal and cancelled the order of penalty which has been upheld by the Tribunal.

3. We have heard Sri D.D. Chopra, learned senior standing Counsel for the revenue Sri J.N. Mathur, learned Counsel has put in appearance for the respondent-assessee.

4. The learned senior standing Counsel submitted that in view of the Explanation 4 to Section 271 of the Act where the figure of loss is reduced penalty is exigible as there is concealment of part of the income. It may be mentioned here that prior to 1-4-2003 under the then Explanation 4 no penalty was exigible where the figure of loss declared in the return is reduced. This position has been upheld by the apex court in Virtual Soft Systems Ltd. Vs. Commissioner of Income Tax, Delhi-I, . The situation changed after substitution of clause (a) in Explanation 4 of the Act with effect from 1-4-2003. The apex court has held that the aforesaid amendment is not retrospective in nature.

5. Respectfully following the aforesaid decision, we are of the considered opinion that the Tribunal was justified in holding that no penalty was exigible in the present case.

6. The appeal accordingly fails and is dismissed. However, there shall be no order as to costs.