(2001) 07 P&H CK 0171

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Appeal No. 86 of 1999

Income Tax Officer APPELLANT

Vs

Babu Lal Jain RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:
Income Tax Act, 1961 — Section 260A, 44AB

Citation : (2001) 251 ITR 656 : (2002) 121 TAXMAN 139

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant;

Judgement

Jawahar Lal Gupta, J.—The Revenue has filed this appeal u/s 260A of the Income Tax Act, 1961, with the prayer that this court may frame the following question and accept the appeal:

"Whether the Income Tax Appellate Tribunal was justified in law in holding that the failure to get the accounts audited was on account of departmental failure to provide photocopies to the assessee despite the documentary evidence that these were supplied the very same day that the assessee asked for them on February 22, 1990, that being the first and only time such request was made ?"

2. We have heard Mr. Sawhney, learned counsel for the appellant, and perused the order passed by the Income Tax Appellate Tribunal.

3. A perusal of the order shows that the dispute in the present case relates to the assessment year 1988-89. A penalty of Rs. 33,000 had been imposed on the assessee for its failure to get the accounts audited. It was against this order of penalty that the assessee had approached the Tribunal. On consideration of the matter, it has been found that the assessee''s "books of account were impounded on February 25, 1988, and the survey conducted at the business premises of the assessee''s proprietary concern". These books were "still lying with the Department". It has been further found that the assessee had requested the

Income Tax Officer to supply photostat copies. These were not furnished. The documents were ultimately supplied to the assessee on February 22, 1990. Thereafter, he had got the accounts audited and filed the return. In view of these facts, the Tribunal came to the conclusion that "there was a reasonable cause for the assessee not to file the return in time as well as get his accounts audited u/s 44AB of the Income Tax Act." Resultantly, it has been held that the penalty as levied was not justified.

4. Nothing has been pointed out to show that these findings arc not correct. It is apparent that the delay was caused by the Department. It is taking advantage of its own wrong. It cannot do so. Resultantly, no ground for interference is made out. The appeal is accordingly dismissed in iimine.

