(2012) 02 AHC CK 0149

In the Allahabad High Court

Case No : Income Tax Reference No. 25 of 2000

Ita APPELLANT

Vs

S.P. Kanodia RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144B, 256(1), 271(1), 69(B)
Income Tax Act, 1961 — Section 143(3), 144B, 256(1), 271(1), 69(B)
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Citation : (2012) 02 AHC CK 0149

Hon'ble Judges : R.K. Agrawal, J;B. Amit Sthalekar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Sri R.K.Upadhyaya, learned senior standing counsel for the Revenue and Sri R.S.Agarwal, learned counsel for the respondent.

2. At the instance of the Revenue the Income Tax Appellate Tribunal has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion of this Court:

"Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in confirming the order of the CIT(A) deleting the penalty of Rs. 1,25,000/- imposed by the Assessing Officer u/s 271(1)(c) of the I.T.Act, on the basis of Tribunal''s order dated 30.4.1990 in I.T.A. No. 51(Alld)/1988?"

3. The brief facts of the case are that on the basis of a paper found during the course of a search conducted in the case of the assessee, an addition of Rs. 1,80,000/- was made on account of unexplained investment u/s 69B of the Act for the assessment year 1981-82. Interest of Rs. 6,696/- was also included in the total income of the assessee in the context of the aforesaid investment. The relevant assessment was completed vide order u/s 143(3)/144B dated 24.9.1984. Penalty proceedings u/s 271(1)(c) were also initiated which

culminated in the imposition of a penalty of Rs. 1,25,000/- vide order u/s 271(1)(c) of the Act dated 15.2.1988. Aggrieved with the above penalty order, the assessee preferred an appeal before the C.I.T.(A) who vide order dated 26.5.1990 cancelled the penalty on the premise that the addition, which formed the basis of the penalty was deleted by the Tribunal vide order dated 30.4.1990 rendered in I.T.A. No. 51 (Alld.) of 1988. The Department preferred a second appeal before the Tribunal, who vide order dated 8.7.1997 dismissed the appeal on the ground tht the addition, on the basis of which the penalty was imposed, was deleted by the Tribunal and there remains no basis of levy of penalty.

4. The Revenue did not accept the order passed by the Tribunal on the quantum side and sought reference u/s 256(1) of the Act. The Tribunal had referred the question proposed by the Revenue which came up to be decided by this Court in Income Tax Reference No. 119 of 1991 (The Commissioner of Income Tax Kanpur vs. M/s Shadiram Ganga Prasad and others). This Court vide judgment and order dated 27th April, 2010 had answered the question referred to in the affirmative which is against the Revenue and in favour of the assessee. As the question referred to by the Tribunal on the quantum side at the instance of the Revenue has been answered in favour of the assessee vide judgment and order dated 27th April, 2010 in our considered opinion the basis of imposition of the penalty does not exist and the Tribunal was justified in deleting the penalty.

5. The question referred to us is, therefore, answered in the affirmative, i.e. in favour of the assessee and against the Revenue. However, there shall be no order as to costs.

