(2015) 09 P&H CK 0228

In the Punjab And Haryana At Chandigarh

Case No : ITA No. 166 of 2014

Kumar Builders — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:
Income Tax Act, 1961 — Section 142(2A), 260A, 271(1)(c)

Citation : (2015) 09 P&H CK 0228

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : S.K. Mukhi, Advocate, for the Appellant; Rajesh Katoch, Advocate, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 25.9.2013 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1357/Chd/2012, for the assessment year 2006-07, claiming the following substantial questions of law:--

i) Whether, on the facts and circumstances of the case, the Tribunal was justified in confirming the penalty so levied by AO u/s. 271(1)(c) of the Income Tax Act, 1961 on account of wrong entry in account books due to non receipt of proper and complete documents by assessee firm and thereby booking under wrong heads by treating the same as concealment?

ii) Whether, on the facts and circumstances of the case, the Tribunal was justified in confirming the penalty so levied by the AO u/s. 271(1)(c) of the Income Tax Act, 1961 on account of wrong entry in account books ignoring the trite law as settled by Hon''ble Supreme Court of India in the case of Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd., ?

iii) Whether the order of the Tribunal is perverse and against the provisions of law?"

2. Put shortly, the facts necessary for disposal of the present appeal as mentioned therein are that the assessee is a firm engaged in the business as Civil Contractor based at Ludhiana and filed its return of income on 31.10.2006 for the assessment year 2006-07 declaring taxable income at Rs. 57,49,202/-. The assessee also filed revised return where the returned income remained unchanged. The assessee claimed the credit of Tax Deducted at Source (TDS) at Rs. 2,66,292/- whereas the TDS certificates annexed with the return of income showed total receipts of Rs. 1,18,87,936/-. The Assessing Officer called for the information from the Executive Engineer, PWD, Sirhind and as per the information received, the total contract receipts were Rs. 1,40,42,320/- against which TDS of Rs. 3,14,551/- was deducted. The assessee was, thus, found to have suppressed the contract receipts to the extent of Rs. 21,54,387/-. Accordingly, the assessee was issued show cause notice to explain the difference. The assessee filed reply by pleading that the difference of Rs. 20,52,268/- be added to the gross receipts on which GP rate be applied. The plea of the assessee before the Assessing Officer was that the said mistake had taken place due to non-receipt of Form No. 16-A. Thereafter, the assessee vide letter dated 24.11.2008 surrendered a sum of Rs. 2,15,439/- as income on gross receipts of Rs. 21,54,387/-. Another communication dated 8.12.2008 was submitted by the assessee that due to bonafide mistake, Rs. 10 lacs was credited to the security account while for the balance amount, profit @ 5.36% was offered for taxation. The case of the assessee was referred under Section 142(2A) of the Act for special audit by the Assessing Officer and made an addition of Rs. 21,54,387/- on account of suppression of receipts from PWD, Sirhind vide assessment order dated 28.5.2009 (Annexure A-1). Another addition was made by the Assessing Officer by rejecting the books of account and income of the assessee was estimated @ 12% on total turnover of Rs. 9,59,16,586/-. The addition made on account of suppression of receipts was telescoped with the total addition made while estimating the net profit @ 12%. The penalty proceedings were also initiated and penalty of Rs. 17,32,335/- was imposed upon the assessee vide order dated 27.1.2011 (Annexure A-2) on the total assessed income. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [hereinafter referred to as "the CIT(A)"]. The CIT(A) vide order dated 31.10.2012 (Annexure A-3) deleted the penalty on account of addition made on estimate basis but confirmed the addition made on account of suppression of receipts to the extent of Rs. 21,54,387/-. Being dissatisfied, the revenue as well as the assessee filed appeals before the Tribunal. The revenue filed appeal against the deletion of penalty by the CIT(A) which was on account of concealed income in pursuance to estimation of profits whereas the assessee filed the appeal against penalty sustained by the CIT(A) on suppression of receipts to the tune of Rs. 21,54,387/-. The Tribunal vide order dated 25.9.2013 (Annexure A-4) dismissed both the appeals. Hence, the present appeal by the assessee.

3. Learned counsel for the assessee submitted that there was no concealment of

income. Relying upon the judgment of the Apex Court in Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd., and of the Bombay High Court in Commissioner of Income-Tax v. Ms. Sania Mirza, ITA No. 526 of 2011 decided on 9.2.2012, it was submitted that the penalty imposed was unsustainable. In fact the assessee had never claimed any benefit under TDS certificate as it had not been issued till the time of filing of the return. The finding recorded by the Assessing Officer, confirmed by the CIT(A) as well as the Tribunal for levy of penalty are against the record.

4. On the other hand, learned counsel for the revenue supported the order passed by the Tribunal.

5. After hearing learned counsel for the parties, we do not find any merit in the appeal. The assessee is a contractor carrying on contracts of various government bodies. The assessee had short declared contract receipts from the civil work undertaken by it by Rs. 21,54,387/-. Some part of the said amount was declared in the security amount by the assessee but not as part of the taxable receipts from PWD, Sirhind. Thus, the assessee had suppressed its contract receipts on which tax was also deducted at source by the said concern. The Assessing Officer, the CIT(A) and the Tribunal maintained levy of penalty under Section 271(1)(c) of the Act on that account. The Tribunal had recorded that the assessee having under declared its receipt is exigible to levy of penalty under Section 271(1)(c) of the Act. The relevant findings recorded by the Tribunal read as under:--

"19. The other addition on which penalty under Section 271(1)(c) of the Act was levied, was under declaration of the receipts by the assessee. The assessee is a Contractor and during the year under consideration, had undertaken contracts of various government bodies. The assessee had declared contract receipts from the civil work undertaken by the assessee. However, receipts totalling Rs. 21,54,387/- were not declared and some part was declared in the security account by the assessee but were not declared as part of the receipts from PWD, Sirhind. When information was called from the PWD, Sirhind, the Assessing Officer found the assessee to have suppressed its contract receipts on which tax was also deducted at source by the said concern. The case of the assessee, however was that it had not received the said TDS certificates from the said department and, hence the confusion and under declaration of the receipts by the assessee. We find no merit in the stand of the assessee in this regard and it is a fit case of levy of penalty for furnishing in accurate particulars of income. The assessee having under declared its receipts is exigible to levy of penalty under section 271(1)(c) of the Act. Accordingly, we uphold the order of the CIT(Appeals) in this regard and confirm the levy of penalty on suppressed receipts to the extent of Rs. 21,54,387/-. Upholding the order of CIT(Appeals), we dismiss the ground of appeal raised by the assessee."

6. Adverting to the judgments in Reliance Petro Products Pvt. Ltd. and Ms. Sania Mirza''s cases (supra) relied upon by the learned counsel for the appellant, it

may be noticed that the principle of law enunciated therein, is well recognized, but in view of the concurrent findings of concealment of income recorded by the Assessing Officer, the CIT(A) and the Tribunal as noticed hereinbefore, no benefit can be derived by the assessee from the aforesaid pronouncements.

7. In view of the above, no question of law muchless a substantial question of law arises in this appeal. Accordingly, finding no merit in the appeal, the same is hereby dismissed.