(2008) 10 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Poonam Industries — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 22-10-2008

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

Citation : (2009) 178 TAXMAN 319

Hon'ble Judges : L.N. Mittal, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the assessee u/s 260A of the Income Tax Act, 1961 (in short, ''the Act'') against the order of the Income Tax Appellate Tribunal Amritsar dated 6-7-2007 in ITA No. 273 (Asr.)/2005, for the assessment year 2000-01.

2. Substantial question of law proposed in the appeal, which has been pressed is in para 7(1), which is as under:

Whether, on the facts and circumstances of the case, the ITAT was justified in confirming the action of CIT(A) in not condoning the delay by treating the ground of bad health of one of the partner as reason for delay of 5 months in filing the appeal as not genuine by completely ignoring the facts and circumstances, explanations, evidences filed and on record and also the principles of natural justice and the case law as relied upon by the appellant.

3. Aggrieved by the order of assessment, the assessee had preferred an appeal before the CIT(A). The same was barred by five months. The CIT(A) dismissed the same with the following observations:

4. I have considered the matter and perused the documentary evidence submitted by the appellant in support of the above assertion. It is seen that most of it relates to the period beginning the last week of August 2004 and early part of September 2004 which is more than a year beyond the date on which the appeal was belatedly filed on 22-8-2003. Earlier to that he had a lipid profile

done on 14-3-2003, at Tagore Heart Care & Research Centre Pvt. Limited, Jalandhar, which showed that total lipid is 718 mg/dl (reference up to 190 mg/dl and Section Triglycerides 108 mg/dl (ref. 25-160 mg/dl). As regards the evidence that relates to by pass surgery done at the Escorts Hospital, Delhi sometime in August, September 2004 the same is clearly not relevant because the appeal had been filed on 22-8-2003. As regards the other documents submitted the results of the pathological test that have been reproduced hereinabove clearly show that there was nothing serious about the health condition of Shri R.B.K. Choudhary, partner, as is sought to be projected by the learned Counsel inasmuch as every item of pathological finding is well within the reference range. In fact, the report is way better than that of even a common man, who would show some aberrations if taken to a pathological laboratory without any complaint.

4. The said view has been affirmed by the Tribunal.

5. We have heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the assessee points out that there is an error of fact in the observations of the IT AT. The period of illness was not only August 2004, as assumed in the impugned order. The period of illness also covered earlier period.

7. Learned Counsel for the revenue submits that even if there was illness of one of the partners, the other partner could have pursued the appeal and the other partner appeared in another Income Tax matter which has been noticed in the order of the Tribunal.

8. We are of the view that though, a party is required to explain each day''s delay and to show that it was prevented by sufficient cause in filing the appeal in time, power to condone delay has to be exercised in a pragmatic manner to advance substantial justice. The plea of illness is admittedly not fake. Even if the other partner had appeared in another Income Tax case, the same could not be conclusive against genuineness of the reason given by the assessee. Every partner may not be aware of all the affairs of the firm. No harm would be done to either party if the matter is heard on merits.

9. For the above reasons, we decide the question proposed in favour of the assessee and accordingly, set aside the impugned order. We remand the matter back to the CIT (Appeals) for a fresh decision on merits in accordance with law. The appellant will appear before the CIT (Appeals), Jalandhar for further proceedings on 19-12-2008.

The appeal is disposed of.

