

(2006) 05 P&H CK 0170
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 359 of 2004

Sandeep Kumar Garg and Co.

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(3), 148, 271(1)

Citation : (2006) 205 CTR 95 : (2008) 298 ITR 106

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Rajesh Garg, for the Appellant;

Final Decision : Dismissed

Judgement

1. The appellant has approached This court by raising the following substantial question of law arising out of order passed by Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal") passed in ITA No. 180/Chd/2004, dt. 25th June, 2004, for the asst. yr. 1987-88:

(i) Whether the Tribunal was justified in law in sustaining the penalty of Rs. 50,000 u/s 271(1)(c) when it was a case of bona fide mistake and nothing was concealed from the Revenue?

2. The brief facts of the case are that the appellant, who is a building contractor, filed his return of income for the assessment year in question, declaring a total income of Rs. 99,840, which was processed on 25th April, 1988, u/s 143(1)(a) of the IT Act (for short "the Act"). Since the assessee failed to declare the amount received from XEN, Haryana State Agricultural Marketing Board, Karnal in his receipts, accordingly a notice u/s 148 of the Act was issued on 22nd Feb., 1991, in response to which the assessee filed his return of income declaring the same at Rs. 1,50,070. The assessment was completed u/s 143(3) of the Act on 11th March, 1991 at a total income of Rs. 3,38,810, which was reduced to Rs. 2,00,300 by the Commissioner of Income Tax (Appeals) [for short "the CIT(A)"].

This order was confirmed by the Tribunal. Undisputed facts of the case are that the original income declared by the assessee was Rs. 99,840. Even in response to notice u/s 148 of the Act, the income declared was 1,50,070, whereas it was finally assessed at Rs. 2,00,300.

3. Since the assessee concealed the particulars of his income, proceedings u/s 271(1)(c) of the Act were initiated for levy of penalty and after due opportunity to the assessee, the ITO levied a penalty of Rs. 75,300, i.e., @ 150 per cent of the tax sought to be evaded, as against a maximum penalty of Rs. 1,00,400, i.e., @ 200 per cent of the tax sought to be evaded. In the appeal filed against this order the CIT(A) while holding that levy of penalty in the facts and circumstances of the case is justified, granted relief to the assessee to the extent that the penalty was reduced to 100 per cent of the tax sought to be evaded. Resultantly, the assessee got a relief of Rs. 25,100 and net amount of penalty imposed and upheld against the assessee remained at Rs. 50,200. Against this order the assessee went in appeal before the Tribunal, who rejected the same while recording the following findings:

5... We find that in this case there is no dispute regarding the fact that the assessee had shown less receipt during the course of original assessment. The plea that the assessee had no intention to conceal income is only based on the submission that the same was erroneously left due to a mistake during accounting process. We have also considered the submission of the learned Authorised Representative that mens rea in this case of concealing the income is not proved, as the assessee had itself shown more receipts in case of one party against less receipt in case of another party. However, we are unable to accept such contention of learned Authorised Representative since the assessee had shown overall less receipt and the reason given was a mistake in accounting which, in our opinion, does not have any strength since showing less receipt itself proves the concealment....

4. We have heard counsel for the appellant and perused the paper book carefully.

5. From a perusal of the material on record, it is clear that the mistake, as was sought to be explained by the assessee in non-declaring the receipt of amount from Haryana State Agricultural Marketing Board, was not a bona fide mistake. On consideration of the entire material on record, all the authorities below came to the conclusion that showing of less receipt of amount by the assessee itself proved the concealment. Even otherwise in the case in hand, the income which was finally assessed; is more than what was declared by the assessee in response to notice u/s 148 of the Act so the mens rea for concealment is clear on the face of it.

6. In view of above, we do not find that any substantial question of law arises in the appeal. Accordingly the appeal is dismissed.