(2011) 02 AHC CK 0162

In the Allahabad High Court

Case No : Income Tax Appeal No''s. 72 of 2002 and 85 of 2005

Sandeep Singh APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Income Tax Act, 1961 — Section 271

Citation : (2011) 02 AHC CK 0162

Hon'ble Judges : Yatindra Singh, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Yatindra Singh and Prakash Krishna, JJ.—These two appeals were heard together and are being disposed of by a common judgment as jointly agreed by the learned Counsel for the parties.

Appeal No. 72 of 2002

2. The Appeal No. 72 of 2002 arises out of order of the Tribunal dated 7.1.2002 passed in ITA No. 2327/All/95 for the assessment year 1992-93.

3. The Assessee was a minor and his income tax return was filed through his father. For the assessment year 1992-93 the Assessing Officer made certain additions towards the interest on the deposit made by the Assessee with the M/s. United Tractors.

4. The case of the Assessee that in this relevant assessment year no interest was paid to him, was not accepted by the Assessing Officer by the order dated 26th of October, 1994. The said order having been confirmed by the First Appellate Authority as well as by the Income Tax Appellate Tribunal, the present appeal has been filed.

5. The above appeal has been admitted on the following two substantial questions of law:

Whether on the facts and in the circumstances of the case, Tribunal is legally justified in confirming the additions of Rs. 1,00,000/-towards alleged accrued interest while such amount was neither received nor receivable by the Appellant from M/s. United Tractors?

Whether the view and observations of the Tribunal that the Assessee has been receiving interest income on this amount of deposits in subsequent years is factually correct and based on any material while no such finding has been recorded by Assessing Authority or by CIT (Appeals) and as a matter of fact, no such interest income has been shown in subsequent years?

6. Heard Sri Krishna Agrawal, learned Counsel for the Appellant and Sri A.N. Mahajan, learned standing counsel for the Department (the Department).

7. It was not disputed that the Assessee had deposited a sum of Rs. 7,4,127/- with the M/s. United Tractors.

8. It was also not disputed that for the earlier assessment years the Assessee did receive interest on the said amount.

9. For the relevant assessment year the case of the Assessee was that the said deposit was not interest bearing deposit and as a matter of fact, no interest was received by him.

10. The above explanation has not found favour with the authorities. The deposit was made with M/s. United Tractors and it was transferred to M/s. Rapti Property Services but no entry was made, has not been accepted by any of the authorities below.

11. In view of the fact that the Assessee did receive the interest on the said deposit in the earlier assessment years, the burden clearly was upon the Assessee as to why the interest was not received during the relevant assessment year. The Assessee has failed to discharge the burden.

12. The learned Counsel for the Assessee has placed reliance upon a Division Bench judgment of this Court in the case of Jwala Prasad Radha Krishna Vs. Commissioner of Income Tax, wherein it has been held that where amount was advanced to sister concern and the interest was received for some years but as a matter of fact the interest was neither paid nor received in the relevant assessment year due to financial crisis, it is not open to the Department to make the addition in the income of the Assessee on the ground of notional receipt of the interest.

13. We find that the said judgment was given on the facts of that case. There, the explanation furnished by the Assessee was accepted which is not so here.

14. In view of the above discussion, we do not find any illegality or perversity in the finding of the Tribunal holding that the Assessee has failed to discharge his burden that he did not receive any interest during the relevant assessment year.

15. We do not find any merit in the appeal. The appeal is dismissed.

Appeal No. 85 of 2005

16. This appeal relates to the assessment year 1994-95 and it arises out of the proceedings u/s 271(1)(c) of the Income Tax Act, 1961.

17. The appeal is directed against the order dated 17th of May, 2004 passed in ITA No. 405/Alld/2002 by the Income Tax Appellate Tribunal, Allahabad.

18. The penalty proceedings under the aforesaid section were initiated and the penalty was levied on the deemed interest income on the deposit made by the Assessee with M/s. United Tractors.

19. The case of the Assessee was that as a matter of fact, no interest was paid or accrued to him.

20. The authorities below after rejecting the explanation furnished by the Assessee levied the penalty.

21. The learned Counsel for the Appellant has placed reliance upon a recent judgment of the Apex Court in the case of Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd., in support of his contention that as a matter of fact, the Assessee has neither furnished inaccurate particulars of the income nor he has concealed the income. It is a case where the notional income was added at the hands of the Assessee.

22. The submission of the learned Counsel for the Appellant is that on these facts, the aforesaid penal provision is not at all attracted.

23. We have carefully considered the above submission of the learned Counsel for the Appellant and find sufficient force therein.

24. The Apex Court in the aforesaid decision held that Section 271(1)(c) of the Act indicates the elements of the strict liability on the Assessee for the concealment or for giving inaccurate particulars while filing return.

25. If the Assessee has furnished all the details of his expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was put to the authorities to accept its claim in the return or not. Merely because the Assessee has claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that itself would not attract the penalty u/s 271(1)(c) of the Act.

26. Here also the Assessee claimed that he did not receive any income on the advance deposit with the M/s. United Tractors. The said explanation has not been accepted by the Department.

27. On these facts, we are of the view that the provisions of Section 271(1)(c) of the Act are not attracted. We find sufficient force in the appeal.

28. In the result, the appeal succeeds and is allowed and it is held that no penalty under the aforesaid Section could be levied on the Assessee.

29. The appeal succeeds and is allowed.

