

(2014) 04 KAR CK 0056
In the Karnataka High Court
Case No : Sales Tax Appeal No. 138 of 2009

Shifa Constructions

APPELLANT

Vs

The Additional Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12-B, 12-B(4), 22-A(1)

Citation : (2014) 45 GST 558 : (2014) 79 KarLJ 366 : (2014) 76 VST 494

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : G.V. Ashok for G.K.V. Murthy, Advocate for the Appellant; S. Sujatha, Additional Government Advocate, Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—This STA is directed against the order dated 27-5-2009 passed by the Additional Commissioner of Commercial Taxes, Zone-1, Bangalore, in exercise of the powers of revision u/s 22-A(1) of the Karnataka Sales Tax Act, 1957 (for short "the Act"), whereby, he set aside the orders of the Appellate Authority and confirmed the order passed by the Assessing Authority. The Assessing Authority vide its order dated 15-3-2006 assessed the tax liability to the extent of Rs. 1,27,220/- and calculated gross profit at the rate of 10% and imposed penalty of Rs. 64,000/- u/s 12-B(4) of the Act. The Appellate Authority while setting aside the order of imposing penalty, took into consideration two payments i.e., Rs. 70,000/- and Rs. 26,000/-, which were paid by two cheques dated 14-2-2005 and 29-3-2006 respectively. The Appellate Authority, however, overlooked the fact that Rs. 26,000/- were paid after the date of assessment. In the present case, we are concerned only with the penalty imposed u/s 12-B(4) of the Act. In this connection, we have perused Section 12-B(4) of the Act, which states that, if at the end of the year, it is found that the amount of tax paid in advance by any dealer for any month or quarter or for the whole year in the aggregate was less than the tax payable for that month or quarter or the tax for the whole year as finally assessed, as the case may be, by more than fifteen per cent, the Assessing Authority may direct such dealer to pay, in addition to the

tax, a penalty, which shall not be less than one half of the tax so paid in short, but not exceeding the amount by which the tax so paid fall short of the tax payable for the month or quarter or for the whole year as the case may be. The Appellate Authority, while examining, whether the difference is more than 15% as contemplated by sub-section (4) of Section 12-B, committed a factual error in adding the amount of Rs. 26,000/- as advance payment. In our opinion, this amount was admittedly paid after the assessment order and was wrongly added to as advance tax to determine whether the difference of the amount is more than 15%. This error committed by the Appellate Authority was noticed by the Revisional Authority and in exercise of the powers u/s 22-A(1) of the Act corrected the order passed by the Appellate Authority.

2. In this view of the matter, we do not find any reasons to interfere with the order passed by the Revisional Authority. The judgment relied upon by learned Counsel for the appellant of the Delhi High Court in Addl Commissioner of Income Tax, Delhi-I Vs. J.K. D'costa, has no application to the facts of the present case. In the case before Delhi High Court, the Assessing Officer had not imposed penalty while passing the assessment order and in this view of the matter, Delhi High Court held that the assessment cannot be said to be erroneous or prejudicial to the interest of the revenue because of the failure of the ITO to record his opinion about the leviability of penalty in the case. Having regard to the facts of the present case, in our opinion, the judgment of the Delhi High Court is of no avail to the appellant. In the circumstances, appeal is dismissed. No costs.