(2011) 04 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 810 of 2008

Shvetananda APPELLANT

Vs

CIT and Others RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Income Tax Act, 1961 — Section 133A, 143(3), 234B, 260A, 271(1)

Citation : (2011) 336 ITR 298

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This appeal u/s 260A of the 1 income tax Act, 1961 (for short ""the Act""), has been filed by the assessee against the

order dated November 26, 2007, passed by the income tax Appellate Tribunal, Chandigarh Bench ""A"", Chandigarh (in short ""the Tribunal""), in I.

T. A. No. 191/Chd/2007, relating to the assessment year 2003-04.

2. The following substantial question of law has been claimed for determination of this court:

Whether on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was right in law in setting aside the order of

the Commissioner of income tax (Appeals), and restoring the order of the Assessing Officer whereby penalty of Rs. 78,750 has been imposed by

the Assessing Officer in spite of the fact that no concealment has been found by the Assessing Officer at the time of survey as well as scrutiny and

further the said amount has been voluntarily declared by the assessee ?

3. The facts, in brief, necessary for adjudication as narrated in the appeal, are

that during a survey u/s 133A of the Act carried out at the business

premises of M/s. Cossets Marketing (P) Ltd., on February 28, 2003, some discrepancies were detected in the record and some incriminating

documents were found. From the documents, it was found that the aforesaid company had been paying a handsome commission and incentives to

its directors and family members. Rohit Khanna, the managing director of the company, who is the husband of the assessee, on being asked to

explain the above discrepancies, gave an undertaking in writing on March 12, 2003 to get an additional amount of Rs. 90,00,000 surrendered

from 14 persons, including Rs. 2,50,000 from his wife, i.e., the present assessee, subject to the condition that no penal action would be initiated

against them.

4. The case of the assessee was later on selected for compulsory scrutiny u/s 143(3) of the Act. During the course of assessment proceedings, it

was noticed that the assessee had not declared any additional amount in the return of her income for the assessment year 2003-04. The assessee,

however, agreed to pay income tax on the amount of additional income, along with interest u/s 234B of the Act, subject to no penal action against

her. The Assessing Officer did not agree with the submissions made on behalf of the assessee and made addition of an amount of Rs. 2,70,000

vide order dated March 8, 2006, besides ordering charging interest thereon, u/s 234B and initiating penalty proceedings u/s 271(1)(c) of the Act.

5. During the course of penalty proceedings, it was observed that the surrender of the additional income by the assessee was not voluntary and in

good faith rather she was compelled by the circumstances to do so. It was further observed that the assessee had not even declared any additional

amount of income surrendered during the course of survey. The Assessing Officer, after considering various judicial enunciations cited before him

held by his order dated September 28, 2006 that the assessee was liable to pay penalty u/s 271(1)(c) of the Act for furnishing inaccurate

particulars of her income of Rs. 2,50,000. The Assessing Officer imposed penalty at the rate of 100 per cent, of the tax sought to be evaded,

which worked out to Rs. 78,750.

6. The Commissioner of income tax (Appeals) (in short ""the CIT(A)"") accepted the appeal of the assessee and deleted the penalty vide order

dated December 15, 20061 The Commissioner of income tax (Appeals) was of the view that the burden was on the Department to prove that any

particular amount was a revenue receipt and the assessee had consciously concealed the particulars of her income or had deliberately furnished

inaccurate particulars of income.

7. The Tribunal accepted the appeal of the Revenue and vide the order under appeal, set aside the order of the Commissioner of income tax

(Appeals) and restored that of the Assessing Officer, and this is how the assessee is in appeal before us.

8. We have heard learned counsel for the parties and perused the record.

9. The solitary issue that arises in this appeal is, whether the assessee was liable for penalty u/s 271(1)(c) of the Act.

10. Learned counsel for the assessee submitted that the surrender was made'' by the assessee subject to the condition of ""no penalty"" and in spite

of the same the authorities have decided the issue against her. The counsel further submitted that the onus was upon the Revenue to establish

concealment and on the strength of a judgment of the Calcutta High Court in Commissioner of Income Tax Vs. Amalendu Paul, and the judgment

of this court in Commissioner of Income Tax Vs. Suraj Bhan, and an order, dated May 31, 2007, of the income tax Appellate Tribunal,

Chandigarh Bench (B), in income tax Appeal No. 192/Chd/07 ITO v. Rohit Nanda, relating to the assessment year 2003-04 argued that the

penalty was not exigible on the assessee. Learned counsel for the Revenue, on the other hand, supported the order passed by the Tribunal.

11. We have given our thoughtful consideration to the submissions made by'' learned counsel for the appellant and find no merit therein. The

Tribunal, in para No. 9 of its order has recorded as under :

We have considered the rival submissions and perused the material available on the record. In the instant case, the learned Commissioner of

income tax (Appeals) while deleting the penalty wrongly held that the Assessing Officer failed to prove concealment independent of the disclosure

made by the assessee. It is noticed that the Assessing Officer while levying the penalty, categorically stated that the action on the part of the

assessee was not voluntary and in good faith, the assessee was compelled by the circumstances of the case to surrender additional income. He accordingly held that the assessee had furnished inaccurate particulars of her income. It is noticed that the assessee in the return of income had not

declared any additional amount of income surrendered during the course of survey, therefore, non-disclosure of income which has already been

surrendered tan-tamounts to concealment, as such the Assessing Officer was justified in levying the penalty u/s 271(1)(c) of the income tax Act,

1961 and the learned Commissioner of income tax (Appeals) wrongly deleted the same. As regards the contention of the assessee in the written

submission that in the similar circumstance penalty has been deleted in the case of Sh. Rohit Nanda, in I. T. A. No. 192/Chd/07, vide order dated

May 31, 2007 is concerned, in that case the amount surrendered was shown in the return of income. So the facts of the present case are different

from the facts of the above referred case by the assessee.

The Hon''ble jurisdictional High Court in the case of Rajesh Chawla v. CIT (supra) has held that in every case mere surrender would not foreclose

the action for concealment of income. In the instant case, since the assessee did not truly disclose her income which was surrendered, so it was a

case of concealment, liable to the penalty u/s 271(1)(c) of the income tax Act, 1961. We, therefore, set aside the impugned order of the learned

Commissioner of income tax (Appeals) and restore that of the Assessing Officer.

12. Further, the judgments of the High Courts and the order of the Tribunal on which reliance has been placed by the learned counsel for the

assessee do not help the assessees case, inasmuch as those cases were decided on the individual fact situations involved therein where a finding

came to be recorded that there was no concealment or furnishing of inaccurate particulars on the part of the assessee therein. Here, the learned

counsel for the assessee was unable to point out that the assessee had disclosed the surrendered amount in the return of income filed by her or that

there was no concealment or that full particulars had been disclosed by the assessee. In the absence of this, the findings recorded by the Tribunal in

the context aforesaid, cannot be faulted and no error of law could be found therein.

13. In view of the above, the substantial question of law is answered against the assessee and accordingly, the appeal is dismissed.

