

Cit Vs. Surendra Kumar Pankaj Kumar

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Court : Allahabad

Decided On : Mar-30-2005

Reported in : [2006]154TAXMAN268(All)

Appeal No. : IT Reference No. 179 Of 1993 30 March 2005

Appellant : Cit

Respondent : Surendra Kumar Pankaj Kumar

Judgement :

ORDER

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following question of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion to this Court:-

'Whether, on the facts and in the circumstances of the case and having due regard to the provision of section 271(2) of the Income Tax Act, 1961, the Tribunal was legally justified in upholding the action of the Deputy Commissioner (Appeals) in cancelling the penalty levied under section 271(1)(a) of the Income Tax Act, 1996-97

2. The reference relates to the assessment years 1984-85 and 1985-86. The facts giving rise to the present reference in brief are as follows :-

3. The respondent-assessee is a registered firm. For the assessment years 1984-85 and 1985-86 the assessee failed to file the return of income within time laid down under section 139(1) of the Act. The penalty proceedings under section 271(1)(a) of the Act were initiated for the aforesaid two assessment years and after hearing the assessee penalty of Rs. 9,405 and Rs. 5,903 respectively were imposed under the aforesaid section by the assessing authority. However, the Deputy Commissioner (Appeals) cancelled the penalties in appeals filed by the assessee on the ground that advance tax paid by the assessee-firm was more for the aforesaid two assessment years than the tax payable by the registered firm. The said orders have been confirmed in second appeal preferred by the department before the Tribunal.

4. Heard learned counsel for the parties.

5. Section 271(1)(a) of the Act provides that the Income Tax Officer in the course of any proceeding under this Act if it is satisfied that any person has failed to furnish return of total income which he was required to furnish under sub-section (1) of section 139 or by notice given under sub-section (2) of section 139 or section 148 or has failed to furnish it within the time allowed in the manner required by sub-section (1) of section 139 or by such notice as the case may be, may direct that such person shall pay penalty. Sub-section (2) of section 271 of the Act reads as follows:-

'When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, then notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.'

6. Thus, section 271(1)(a) envisages imposition of penalty for failure to file the return of total income or delayed filing of return without reasonable cause, and also for failure to file it in the manner and within the time required. The parameter for levy of penalty is the period of delay viz, default in filing the return of total income without reasonable cause. Section 271(1)(a)(i)(b) of the Act prescribes manner for calculation of the penalty. It says that in addition to the amount of tax, if

any, payable by the assessee, a sum equal to 2 per cent of the assessed tax for every month during which default continued to be leviable as penalty. The combined reading of section 271(1)(a) with sections 271(2) and 271(1)(a)(i)(b) is that the imposition of penalty is linked with the assessed tax. Explanation attached to section 271(1)(a)(i)(b) defines the assessed tax which means tax as reduced by the sum, if any, deducted at the source or paid in advance.

7. In the present case the return was filed with delay by the assessee which was a registered firm. Sub-section (2) of section 271 of the Act provides that for the purposes of calculation of amount of penalty under section 271(1)(a) of the Act the assessee shall be deemed to be treated as unregistered firm who worked out the tax assessed. Meaning thereby that so far as the levy of penalty is concerned for the default committed under section 271(1)(a), the assessee would be treated as unregistered firm. We could lay our hands on a judgment of this court in the case of Ram Bilas Purshottam Das v. CIT : [1993]201ITR11(All) wherein it has been held as follows:-

'The legal position is that the penalty exigible for delay or default in furnishing the return of income shall be two per cent for every month during which the default continued and the quantum of penalty is to be calculated with reference to the 'assessed tax', i.e., tax payable on total income, as reduced by the sum, if any, deducted at source or paid as advance tax. However, if the defaulter is a registered firm, for the purpose of imposition of penalty, the firm is to be treated as an unregistered firm and, so treated, the 'assessed tax' must be calculated on the basis that it was an unregistered firm.' (p. 15)

8. This court has followed the judgment of Madhya Pradesh High Court delivered in Delux Publishing Co. v. Addl. CIT : [1981]127ITR782(MP) . The following paragraph of Madhya Pradesh High Court is quoted therein:-I

'By section 271(2) of the Act, a fiction is created and even if the person liable to penalty is a registered firm, the penalty imposable under section 271 of the Act shall be the same amount as would be imposable on that firm if that firm were an unregistered firm. Therefore, in the case of registered firm, the tax assessable has to be worked out as if it were an unregistered firm and on that basis the penalty

has to be calculated because the fiction created has to be carried to its logical extent....

In our opinion in the cases covered by section 271(2) of the Act, in order to calculate the penalty, the tax payable by the assessee on the income assessed has to be determined on the basis that the assessee is an unregistered firm and the penalty has to be calculated on the tax so determined. . . .' (p. 786)

9. We have followed the decision of this court in the cases of Ram Bilas Purshottam Das (supra) and CIT v. C. Radio(IT Reference No. 231 of 1992, dated 22-3-2005).

10. In view of the above discussion we answer the question in negative, L e., in favour of the department and against the assessee. There shall be, however, no order as to costs.

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