Vs. Brijendra Gupta..Respondent

Vs. Brijendra Gupta..Respondent

SooperKanoon Citation : sooperkanoon.com/52229

Court : Kolkata

Decided On : Jun-08-2015

Judge : Girish Chandra Gupta

Respondent : Brijendra Gupta..Respondent

Judgement :

ITA No.330 of 2009 IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Income Tax) ORIGINAL SIDE -Commissioner of Income Tax, Central-III, Kolkata .APPELLANT VERSUS Brijendra Gupta .RESPONDENT Present: The Hon'ble Justice GIRISH CHANDRA GUPTA The Hon'ble Justice ARINDAM SINHA Date: 8th June, 2015 Appearance: Mr.R.K.Sinha, Adv.for the Appellant Mr.N.K.Poddar, Sr.Adv.Mr.V.Tibrewal,Adv.For the Respondent The Court: The subject matter of challenge in the appeal is a judgment and order dated 19th June, 2009 pertaining to the assessment years 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05 by which penalty under section 271(1)(c) of the Income Tax Act was deleted.

A search was conducted on 15th February, 2006 under section 132 of the Income Tax Act.

Notice under section 153A was issued, in response whereof, the assessee filed his return on 19th February, 2007.

It is a fact that the assessee concealed an income of Rs.86,16,319/- for the assessment year 2000-01.

Similarly, undisclosed income for the assessment years 2001-02, 2002-03, 2003-04 and 2004-05 were there.

The assessee made a statement under section 132(4) of the Income Tax Act.

The question arose whether the assessee is entitled to immunity from penalty under Explanation-5 to Section 271(1)(c) of the Income Tax Act.

The learned Tribunal has answered the question in favour of the assessee.

The revenue has come up in appeal.

The following question of law was suggested by the revenue.

Whether on the facts and circumstances of the case, the learned Tribunal was justified in law in confirming the order of the CIT (A) in deleting the penalty levied under section 271(1)(c) of the Income Tax Act, 1961 on the ground that the assessee is entitled to immunity from penalty on account of Explanation 5 to Section 271(1) when the assessees case does not come under the purview of the exceptions provided therein.

Mr.Poddar, learned senior advocate appearing for the assessee has drawn our attention to an unreported judgment of this Court to which one of us(G.C.Gupta,J.) was a party in ITA No.39 of 2010, wherein this Court held as follows : We have considered the rival submissions advanced by the learned advocates appearing before us.

Whether the assessee would have disclosed the income or would not have disclosed the income had the search not been conducted is not a question which falls for our determination.

The question for determination is whether the Tribunal was right in allowing the immunity under Explanation-5 to section 271 of the Income Tax Act.

All the requirements of the clause quoted above were met by the assessee and, therefore, the Tribunal took the correct view of the matter in allowing the immunity and upholding the view of the Commissioner of Income Tax (Appeals) and setting aside the order of penalty passed by the Assessing Officer.

Mr.Poddar submitted that it is not in dispute that all the conditions were complied with by the assessee.

He drew our attention to paragraph-6 from the judgment of CIT (Appeals) which reads as follows: The submissions are carefully considered.

The undisputed fact about the difference between the income declared u/s 139(1).additional income offered u/s 132(4) and the assessed income u/s 153A being identical with the income returned u/s 153A as the aggregate of the original declaration of income and the additional income offered for tax u/s 132(4) are tabulated herein above.

In my opinion, the language of Explanation is very clear.

It provides immunity from penalty in respect of the amount of concealed income admitted during the search in a statement u/s 132(4).In this situation, the Delhi High Court in the case of CIT v.

Chhabra Emporium (264 ITR249 and Madras High Court judgment in the case of CIT v.

Chandru (266 ITR175 and Rajasthan High Court judgment in the case of Gebilal Kanhailal versus ACIT (270 ITR523 have held that penalty is not leviable.

No further requirements are specified in the language of law.

Under the circumstances and respectfully following the orders of the authorities cited above, the order of penalty is cancelled and the appeal is allowed.

Mr.Sinha, learned advocate appearing for the revenue did not dispute the fact that the assessee duly satisfied the conditions.

However, for the sake of clarity, some cloud is required to be dispersed.

Explanation-5 to Section 271(1) of the Income Tax Act reads as follows: Explanation 5.- Where in the couRs.of a [search initiated under section 132 before the 1st day of June, 2007]., the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income,(a) for any previous year which has ended before the date of search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein; or (b) for any previous year which is to end on or after the date of the search, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income, [unless,(1) such income is, or the transactions resulting in such income are recorded,(i) in a case failing under clause (a).before the date of the search; and (ii) in a case failing under clause (b).on or before such date, in the books of account, if any, maintained by him for any source of income or such income is otherwise disclosed to the [[Principal Chief Commissioner or Chief Commissioner].or [Principal Commissioner or Commissioner].].before the said date;or (2) he, in couRs.of the search, makes a statement under subsection(4) of section 132 that any money, bullion, jewellery or other valuable article or thing found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time specified in [***].subsection (1) of section 139, and also specifies in the statement the manner in which such income has been derived and pays the tax, together with interest, if any, in respect of such income. Clause (a) contemplates income for any previous year for which returns has been furnished but the income since disclosed had not been shown.

It is axiomatic that if such income had been disclosed in the returns filed under Section 139, the question of undisclosed income would not have arisen.

When the return had been filed but the income since discovered was not disclosed, the question of concealment naturally arises.

The legislature, however, made a conscious departure by carving out an exception provided the conditions laid down in Clause (i) or Clause (ii) thereof have been complied with.

We are, in this case, concerned with Clause (ii).One of the conditions is that the assessee makes a statement under sub-Section (4) of Section 132 that the assets unearthed have been acquired out of his income which has not been disclosed so far in his returns of income already filed.

The difficulty arises by the use of the expression to be furnished before the expiry of time specified in sub-Section (1) of Section 139.

A confusion is likely to arise as to whether the departure has been sought to be made by the legislature only for those cases where the statement as regards undisclosed income was made pertaining to a previous year for which time to file return under Section 139 had not expired.

But that was not the intention because the expression unless appears after Clauses (a) and (b) of Explanation which provides for imposition of penalty.

Therefore, unless has to apply to the provision for imposition of penalty.

Therefore, the aforesaid expression to be furnished has to be interpreted as required to be furnished.

Only in that case the Section will make a meaning otherwise the Section does not make any meaning.

We are supported in our view by the judgment of the Madras High Court in the case of C.I.T.versus SDV Chandru reported in (2004) 266 ITR175wherein a Division Bench opined that The additional words which refer to the time specified in section 139(1) are only a reiteration of the legal requirement regarding the time within which returns should normally be filed. In that view of the matter, the question proposed by Revenue is answered in the affirmative and in favour of the assessee.

The appeal is thus disposed of.

(GIRISH CHANDRA GUPTA,J.) (ARINDAM SINHA,J.) km/sb.