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V.K. Mathur Vs. Ito

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-25-2000

Reported in : (2001)74TTJ(Delhi)277

Judge : S Khan, S D Singh

Appellant : V.K. Mathur

Respondent : ito

Judgement :
These are two appeals filed by the assessee against the order dated 22-4-1993, of Commissioner (Appeals). They pertain to assessment year 1987-88 and 1988-89.

Both these appeals are being decided by a common order as identical grounds are raised therein. In ITA No. 4358, the assessee has raised the following ground : "1. That the learned Commissioner (Appeals) has erred both in law and on facts in not cancelling the penalty imposed by the learned assessing officer under section 271(1)(a) of the Income Tax Act, 1961, and holding that the delay in filing the return of income was not on account of a reasonable cause." It was submitted on behalf of the assessee that the return was filed late due to the negligence on the part of the counsel of the assessee and it was also his contention that in the circumstances penalty should not have been imposed upon him. Reliance was placed on Salahuddin & Ors. v. ITO (1983) 16 TTJ (Ind) 392, ITO v. Pashupati Banerjee (1982) 13 TTJ (Cal) 440. Apart from this, reliance was placed upon Laxmi Cutpiece Bhandar v. CIT (1989) 31 ITD 421 (Del).

Learned Departmental Representative on the other hand, relied upon the orders of the authorities below. It was his submission that no evidence had been filed by the assessee to support his contention that there was a negligence on the part of the counsel. Apart from that, it was also his contention that the requirements of filing of return cannot be fulfilled by the counsel of the assessee alone. The assessee also has to participate in this exercise by way of appending his signature, providing the salary certificate/FDR interest certificate, etc., and consequently the entire blame cannot be shifted to the counsel of the assessee and the assessee also is liable for his negligence. As such, it was submitted that the penalty was correctly imposed.

On a perusal of the record, it is seen that the return was filed for the assessment year 1987-88 and assessment year 1988-89 on 3-1-1989, whereas it was to be filed for the assessment year 1987-88 by 30-6-1987, and for the next assessment year 30-6-1988. Even before the Commissioner (Appeals), the counsel on behalf of the assessee made a similar submission that it was the case of negligence on the part of the counsel of the assessee, that the complete papers had been given to the assessees counsel and he did not file the return in time. The Commissioner (Appeals) also observed that no evidence in support of this contention was filed in front of him. Even before us, no evidence has been filed supporting this contention and apart from this, it was specifically queried from the counsel that even now if he was in a position to produce and evidence supporting his contention he expresses his inability to do the same. In the facts and circumstances of the case, we are of the opinion that the order of the Commissioner (Appeals) deserves to be upheld. The assessee has relied upon Lakshmi Cutpiece Bhandar v. ITO (supra).

"For the assessment year 1982-83, the assessee registered firm filed its return after a delay of 14 months. The reason for the delay in filing of the return, given by the assessee before the authorities was that the return along with the other papers had been handed over to the counsel who was to file the return with the Income Tax Officer at Shivpuri and the counsel who was residing at Gwalior, misplaced the return along with papers handed over to him. Therefore, the assessee contended that the delay was due to a reasonable cause and that there was no conscious default by the assessee. Further, it was also contended that the tax paid

in advance was more than the assessee tax.

The Income Tax Officer imposed penalty on the assessee and the Appellate Assistant Commissioner confirmed the same.

On second appeal : The assessee contended that no penalty was leviable as tax determined on assessment was less than the advance tax paid." "..... The Honble High Court has held that in the case of registered firms where, the assessed tax is covered by the tax deducted at source or tax paid in advance, penalty under section 271(1)(a) cannot be imposed and a firm cannot be treated as unregistered firm for purposes of levy of penalty under section 271(1)(a). We accordingly delete the penalty, imposed under section 271(1)(a) by the Income Tax Officer and confirmed by the Appellate Assistant Commissioner." "...In this case preponderance of probabilities are in favour of the assessee ....." The facts of this case would not help the case of the assessee for the reason that we do not know whether any evidence was filed before the authorities pertaining to the negligence of the counsel or any affidavit, on behalf of the assessee was on record. As such, this case is distinguishable on facts from the appeal before us.

The assessee has also relied upon Salahuddin & Ors. v. ITO (supra).

This case also would not help the case of the assessee. The facts of the case are distinguishable. In this case, the return of income was filed by the assessee. It was late by 27 months and the assessee explained that he had filed for an extension of time by 3 months and the Income Tax Officer had not replied to the same and it was also explained, that the accountant of the firm, of which assessee was a partner had remained ill and share from the firm could not be gathered and the assessee also could not ascertain the sources, other than the partnership. This explanation was rejected by the Income Tax Officer and penalty under section 271(1)(a) was imposed and the Tribunal held that the Income Tax Officer had not brought any material on record to show that, the explanation given by the assessee was false and hence the penalty had been deleted.

Before us, the assessee has led no evidence to support his contention that there was a negligence on the part of the counsel of the assessee.

No proof or evidence has been placed before us, showing that the assessee had supplied the papers to the counsel well within the time.

No effort has been made by the assessee to even place an affidavit on record, stating the true state of affairs or stating that earlier his counsel was such and such person and subsequently because of his negligence he changed his counsel. No evidence supporting this contention apart from his oral statement is there before us.

The assessee had relied upon this case for the proposition that where it was a bona fide belief of the assessee that return had been filed by his counsel, it was held to be a reasonable cause for the delay and penalty in the circumstances was not leviable. The facts of this case are that the assessee stated right from the beginning that he used to give blank return forms to his lawyer for filing the return and the lawyer failed to file the return in time and the Income Tax Officer disbelieved the explanation and imposed penalty under section 271(1)(a). The Tribunal observed that the returns for subsequent years were filed in time and held that the explanation was reasonable and as such, penalty was not leviable in the circumstances.

The facts of this case again would not help the assessee for the reason that here, there is nothing before us to come to the conclusion that the assessee has been in the habit of filing blank returns to his counsel. Apart from his mere statement that his counsel has been negligent, there is nothing on record before us that the counsel has been negligent. The onus of filing returns cannot entirely be shifted to the counsel because if that is held to be so, then the entire Act would collapse because some amount of responsibility has to be shared for filing of return in time by the assessee. During the course of argument, it was brought out before us that the assessee is a director of an import-export company and as such it is not feasible to presume that he would be totally ignorant about his responsibility and would not be conscious of discharging the same. Had he been an illiterate person, probably a greater responsibility could have been fixed on the counsel but in the peculiar circumstances of the case before us, that cannot be held to be so. We are of the opinion that the filing of return is an act which requires some amount of

active participation on the part of the assessee and the entire burden cannot be shifted to the counsel. The authorised representative of the assessee has not been able to bring an iota of evidence supporting his contention. No reference has been made to any correspondence which should have been entered into on behalf of the assessee with his counsel asking him why the return was not filed in time or for that matter, no correspondence has been filed before us which shows that the relevant papers were supplied to the counsel within the required time. Apart from that, the assessee in an affidavit could have stated that due to the negligence of his counsel, he has changed his counsel named XYZ who has been his counsel for the last so many years to a different counsel ABC. No such effort has also been made before us.

In ground Nos. 2 and 3, the assessee challenges that the explanation offered by the assessee, was not held to be a reasonable cause by the Commissioner (Appeals). These grounds due to the reasons given above are rejected and it is held by us that the explanation offered by the assessee is not a reasonable cause.

By ground No. 2, the assessee challenges that he was not granted fair and proper opportunity to adduce the required evidence. This ground of the assessee is also rejected for the reason that no evidence has been filed before us even upto this stage and no such plea has been raised before us during the course of argument. In fact, a specific query had been made by the Bench to the authorised representative of the assessee asking that whether he was in a position to file any evidence at this stage to support his contention. The authorised representative of the assessee expressed his inability to do the same and as such, this ground is also rejected.

In ITA No. 4359, the assessee has raised identical ground and in view of our detailed discussion in ITA No. 4358, the appeal of the assessee is rejected as facts and circumstances are identical.

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