

Saroop Lal Adlakha Vs. Dcit

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jun-01-2005

Reported in : (2006)99TTJ(Delhi)724

Judge : K Singhal, R Singh

Appellant : Saroop Lal Adlakha

Respondent : Dcit

Judgement :

1. Since common issues are involved in all these appeals, the same are being disposed of by the common order for the sake of convenience. The issues arising in these appeals are :- (i) Whether the penalty proceedings were not validly initiated as per the ratio laid down by the Hon'ble jurisdictional High Court in the case of Ram Commercial Enterprises Ltd. 246 ITR 568; and (ii) Whether this judgement of the jurisdictional High Court is per incuriam.

2. Since legal issues are involved in these appeals, it is not necessary for us to set out the facts in detail. It is suffice to say that in all these cases the assessments were completed Under Section 143(3) and at the end of the assessment order it was mentioned to the effect that penalty proceedings are/are being initiated separately.

Apart from these observations the Assessing Officer had not whispered anything about the satisfaction in terms of Section 271(1)(c). On these facts the question for

consideration is whether the penalty proceedings were initiated in accordance with law.

3. This aspect of the issue was the subject matter of consideration before the Hon'ble jurisdictional High Court in the case of Ram Commercial Enterprises Ltd. (supra). The Hon'ble High Court, following the judgement of Supreme Court in the case of CIT v. S.V. Angidi Chettiar 44 ITR 739, held that mere observations of the AO that penalty proceedings are being issued separately does not amount to satisfaction in terms of the provisions of Section 271(1)(c). The relevant observations of their Lordships are quoted below:- "A bare reading of the provisions of Section 271 and the law laid down by the Supreme Court makes it clear that it is the assessing authority which has to form its own opinion and record its satisfaction before initiating the penalty proceedings. Merely because the penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at in the absence of the same being spelt out by the order of the assessing authority.

Even at the risk of repetition we would like to state that, the assessment order does not record the satisfaction as warranted by Section 271 for initiating the penalty proceedings." 4. In view of the above observations, the court held that penalty proceedings were not validly initiated and consequently the penalty levied by the tax authorities was invalid. This judgement has been repeatedly followed by the jurisdictional High Court in the case of Diwan Enterprises 246 ITR 571, CIT v. B.R. Sharma, 275 ITR 303, and in the recent case reported as CIT v. Vikas Promoters Pvt. Ltd. In view of these decisions it has to be held that in all the cases before us, penalties were not validly initiated in as much as no satisfaction in terms of Section 271(1)(c) was recorded by the AO.5. In view of the above, we would have allowed the appeals of the assessee before us, but the Id. DR strongly submitted before us that the aforesaid judgement of the Hon'ble Delhi High Court in the case of Ram Commercial Enterprises Ltd. (supra) is per incuriam in as much as their Lordships relied upon and referred to in their judgement only part of the observations of the Hon'ble Supreme Court in the case of CIT v. Angidi Chettiar appearing at page 745 of the report and did not refer to the remaining portion of the observations of the Apex Court.

At this stage, it would be appropriate to reproduce the relevant observations of the Apex Court, as under- "The power to impose penalty Under Section 28 depends upon the satisfaction of the Income-tax' Officer in the course of proceedings under the Act. It cannot be exercised if he is not satisfied about the existence of conditions specified in clauses (a), (b) or (c) before the proceedings are Concluded. The proceeding to levy penalty has, however, not to be commenced by the Income Tax officer before the completion of; the assessment proceedings by the Income Tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of notice or initiation of any step for imposing penalty as a condition for the exercise of the jurisdiction. There is no evidence on the record that the Income Tax officer was not satisfied in the course of the assessment proceeding that the firm had concealed its income. The assessment order is dated the 10th of November, 1951, and there is an endorsement at the foot of the assessment order by the Income Tax Officer that action Under Section 28 had, been taken for concealment of income indicating clearly that the Income. Tax Officer was satisfied in the course of the assessment proceeding that the firm had concealed its income.

6. It was pointed out by him that underlined portion of the above passage was not quoted by the jurisdictional High Court in the above case and, therefore, failed to consider the same. According to him, had the Hon'ble Delhi High Court considered the entire observations of the Apex Court, the decision would have been entirely different. He proceeded to argue that in the case before the Hon'ble Supreme Court, there was an endorsement at the foot of the assessment, order by the Income-tax Officer that action Under Section 28 had been taken for concealment of income which clearly indicated that the Income-tax Officer was satisfied in the course of the assessment proceedings that the assessee had concealed its income. He further submitted that in all the present cases similar endorsement is there and, therefore, such endorsement amounts to satisfaction in terms of Section 271(1)(c) as per the ratio laid down by the Hon'ble Supreme Court. It was finally argued by him that the judgement of Hon'ble Delhi High Court is per incuriam and contrary to the ratio laid down by the Hon'ble Supreme Court in the case of Angidi Chettiar (supra) and consequently the judgement of Hon'ble Delhi High Court be ignored.

7. We are unable to accept the above contention of the Ld. DR. It appears that the Departmental Representatives are not aware of the exact meaning of the legal maxim "per incuriam." In paragraph 578 at page 297 of Halsbury's Laws of England, Fourth Edition, the rule of per incuriam is stated as follows:- "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision or when the decision is given in ignorance of the terms of a statute or rule having statutory force "In Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer Labour Court, , the Supreme Court explained the expression "per incuriam" thus (at page 36 of 77 FJR) "The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when the Supreme Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of the Supreme Court."

8. As noticed by us above, a judgement can be said to be per incuriam only if it is rendered in ignorance of the provisions of a statute or a rule having statutory force or a binding authority. But, if the relevant provisions of the Act and the binding judgements have been considered by the Court in its judgement, then it cannot be said that the judgement was delivered in ignorance of the relevant provisions of the Act or the binding precedent. In the present cases, it is not the case of the Revenue that relevant provisions of the Act were not considered. It is also not the case of the Revenue that the jurisdictional High Court rendered the judgement in ignorance of the Supreme Court judgement. In our considered opinion, if the judgement of the Apex Court has been considered by any other Court, then it has to be legally presumed that the entire judgement was considered by the court. Since the judgement of the Apex Court in the case of Angidi Chettiar (supra) was duly considered by the Hon'ble Delhi High Court in the case of Ram Commercial Enterprises Ltd., it cannot be said that such judgement of the Hon'ble Delhi High Court was per incuriam.

9. We are also of the considered view that there is no conflict between the Supreme Court judgement and the judgement of the Delhi High Court.

We' have gone through the judgement of the Apex Court. It is seen that the Hon'ble Court has not quoted the actual endorsement at the foot of assessment order, but from the observations made by their Lordships at page 745 of the report, it is clear that endorsement was to the effect that action Under Section 28 had been taken for concealment of income.

However, in the case before the Hon'ble High Court there was no such endorsement. Nowhere the assessing Officer observed that penalty proceedings were being initiated either for concealment of the particulars of income or for furnishing of inaccurate particulars of income in terms of Section 271(1)(c). In the absence of such observations, their Lordships -held that recording of the satisfaction was condition precedent for initiating the penalty proceedings and mere observations that penalty proceedings are being initiated separately was not suffice to initiate valid penalty proceedings. In a recent judgement in the case of CIT v. Vikas Promoters (P) Ltd. (supra) the Hon'ble jurisdictional High Court again observed that the apex court in the case of Angidl Chettiar, had emphasized that satisfaction is not to be in the mind of AO, but must be reflected from the record. Therefore, element of satisfaction should be apparent from the order itself. This shows that judgement of Supreme Court was duly considered and applied in various judgements. Consequently, neither the judgement of jurisdictional High Court can be said to be per incuriam nor in conflict with judgement of apex court.

10. In view of the above discussion, it is held that penalty proceedings were not initiated in accordance with law and consequently, the penalties levied Under Section 271(1)(c) cannot be sustained. The orders of the CIT(A) in all these cases as well as the penalty orders passed by the AO are hereby cancelled.

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