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Court : Rajasthan

Decided On : Oct-04-2002

Reported in : (2002)178CTR(Raj)101

Appeal No. : IT Ref. No. 27 of 1996 4 October 2002 A.Y. 1983-84

Appellant : Jatturam and Sons

Respondent : Cit

Advocate for Pet/Ap. : Anjay Kothari, *for the Assessee* Sundeep Bhandawat, *for the Revenue*

Judgement :

N. N. Mathur, J.

The Tribunal, Jaipur, has referred the following questions for the opinion of this court :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right to hold that 'Amnesty Scheme' did not apply to assessment proceedings pending under section 147 having been initiated by the service of notice under section 148 served on the assessee on 27-2-1986, for the assessment year 1983-84, but not in penalty proceedings and, therefore, various circulars containing Amnesty Scheme were not applicable to the assessee's case

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the applicability of the 'Amnesty Scheme' could be judged in assessment proceedings including the appellate proceedings but not in penalty proceedings?'

2. The brief facts of the case are that the assessee is an Hindu undivided family (specified) deriving interest income from M/s Janu Ram Surender Kumar, Srikanpur, rental and S.O.P. The assessee was required to file return of his income for the assessment year 1983-84 on or before 31-7-1983. As the assessee escaped the assessment, the notice under section 148 was served on 27-3-1986. In response to the notice, the assessee filed return on 29-9-1986, declaring an income of Rs. 1,22,560. The assessing officer assessed the income under section 143(3) of the Income Tax Act vide order dated 31-3-1987. The assessing officer initiated penalty proceedings under section 271(1)(a) and 273(2)(b) of the Income Tax Act against the assessee. In response to the notice issued under section 274 of the Income Tax Act, the assessee explained that since it had filed its return of income under the Amnesty Scheme, no penalty under section 271(1)(a) was leviable upon it as per the Central Board of Direct Taxes Circular No. 415, dated 17-2-1986. The assessing officer levied the penalty of Rs. 52 628 for assessee's default under section 271(1)(a) and of Rs. 1,140 under section 273(2)(b) of the Income Tax Act.

3. The levy of penalty was confirmed by the Commissioner (Appeals). The Tribunal cancelled the penalty of Rs. 1, 140 for default under section 273(2)(b). As regards default under section 271(1)(a) of the Income Tax Act, the Tribunal rejected the plea of the assessee that he was immune from being penalised under section 271(1)(a) having filed the return under Amnesty Scheme and tax paid on the ground that there was no finding of appropriate authority that assessee had filed the return under the Amnesty Scheme. The Tribunal also found that the scheme had come into force with effect from 5-11-1985, but the assessee filed the return only after the issue of notice under section 148 of the Act.

4. It is contended by Mr. Anjay Kothari, learned counsel appearing for the assessee, that return was filed on 29-9-1986; duly marked as 'Under CBDT

Circulars' and paid tax of Rs. 69,828, that a revised return marked as 'Under Amnesty Scheme' and paying additional tax of Rs. 1,292 was filed on 31-3-1987, that the Amnesty Scheme was in force from 5-11-1985, to 31-3-1987, and as such the assessee was entitled to the benefit of the said Scheme. The learned counsel has read before us the order of the Tribunal and pointed out that there is a contradictory findings on the question of filing of return under the Amnesty Scheme. It is also submitted that since the return was filed during the currency of the Amnesty Scheme, there was no reason to say that it was not filed under the said Scheme.

5. On the other hand, it is submitted by Mr. Bhandawat, learned counsel appearing for the revenue, that the assessee has failed to explain as to why the return was not filed till the issuance of notice under section 148 and why did it not furnish the statement of advance tax payable. It is further submitted that the decision of the assessing authority not giving the benefit of the Amnesty Scheme in the assessment proceedings having become final cannot be subject of consideration in penalty proceedings.

6. We have considered the rival contentions, The Amnesty Scheme was administered by the Central Board of Direct Taxes through its various circulars with a view to induce the tax evaders to make a clean breast of past evasions and square up accounts with the revenue without apprehension of facing prosecutions and suffering penalties. The Division Bench of Madhya Pradesh High Court in Smt. Manohar Deo v. CWT : [1997]223ITR435(MP) has pointed out following factors as relevant in such matters :

(A) The assessee makes full and true disclosure voluntarily and in good faith, before the expiry date of the scheme, i.e., 31-3-1986;

(B) The assessee pays the tax on the net wealth as disclosed before 31-3-1986;

(C) The assessee co-operates in enquiry relating to his assessment of wealth.

In the said case, the court held that even when the returns are filed after the notice, it can be legitimately contended that the assessee has co-operated in the

enquiry.

7. The Tribunal has referred the second question as to whether the Amnesty Scheme could be judged only in the assessment proceedings and not in the penalty proceedings without first addressing itself on the question. The assessee has placed before us material to show that returns were filed under the Amnesty Scheme. Thus, the question is required to be considered as to whether the returns were filed by the assessee under the Amnesty Scheme and the other incidental questions. In these circumstances, in our view, it would be appropriate to set aside the order of the Tribunal and remand the case for passing a fresh order after addressing on the question referred to above.

8. Consequently, the order of the Income Tax Tribunal, Jaipur, dated 20-5-1996, is set aside. As the matter has arisen from the Jodhpur District, it shall be heard by the Tribunal, Jodhpur. The Tribunal will decide the appeal afresh in the light of the observations made above. The reference is returned unanswered.