RESERVED

Court No. - 33

Case :- INCOME TAX APPEAL No. - 206 of 2005

(ASSESSMENT YEAR 1996-97)

Appellant :- M/S Jai Palace
Respondent :- The Commissioner Of Income Tax & Another
Counsel for Appellant :- Shakeel Ahmad
Counsel for Respondent :- S.C.,A.Kumar,A.N. Mahajan,B.J.Agarwal,D. Awasthi,G. Krishna,R.K. Upadhyay,S.C.,S.Chopra

Hon'ble Tarun Agarwala,J.
Hon'ble Dr. Satish Chandra,J.

(PER HON'BLE DR. SATISH CHANDRA, J)
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The present appeal is filed by the assessee under Section 260A of the Income Tax Act, 1961 against the order dated 28.02.2005 passed by Income Tax Appellate Tribunal, Agra in I.T.A. No. 187/Agra/2000 for the assessment year 1996-97.

On 07.09.2007, a coordinate Bench has admitted the appeal on the following substantial questions of law :

(a) Whether upon the facts and circumstances of the case, Tribunal was justified in holding that the surrender made by the appellant of an amount of Rs. 1,47,000/- deposited by various parties shown in the Balance-sheet attached to the return of income has not been filed voluntarily and in good faith?

(b) Whether on the facts and in the circumstances of the case, the Tribunal was correct that when the appellant was concerned by the Assessing Officer from all sides, then only appellant made the

surrender of Rs. 1,47,000/-?

(c) Whether on the facts and in the circumstances of the case, the Tribunal was justified in overlooking fact that the Assessing Officer did not allow further time for producing the depositors and the appellant just to purchase peace had surrendered the said amount?

(d) Whether there was any material available to show that the amount surrendered by the appellant was its concealed income and the Tribunal has overlooked this vital aspect?

(e) Whether upon the facts and circumstance of the case, the additions under section 68 can be treated as a concealed income of the appellant for imposing penalty under section 271(1)(c) of the Act?

The brief facts of the case are that the assessee has filed the return on 24.12.1996, when his case come under scrutiny, then the assessee has revised the return and has surrendered a sum of Rs. 1,47,000/- pertaining to the cash credit. The A.O. has made the addition at Rs. 1,47,000/- and at the same time initiated the penalty proceedings under Section 271(1)(c) of the Act and levied the penalty of Rs. 60,000/-. The same was confirmed by the appellate authorities. Not being satisfied, the assessee has filed the present appeal.

With this background, Shri Shakeel Ahmad, the learned counsel for the assessee has submitted that the penalty amount at the rate of 100% comes to Rs. 58,800/-, but the A.O. has levied the penalty with the wrong figure of Rs. 60,000/-. He further submits that there was no malafide intention on the part of the assessee. The amount of Rs. 1,47,000/- represents to the cash credits from eight persons, each deposit was less than Rs. 20,000/-. To support his argument, he relied on the ratio laid down in the following cases :-

CIT Vs. M.P. Narayanan 1998 (149) CTR (Madras) 1

Lastly, he made a request that the penalty levied by the A.O. may kindly be cancelled.

On the other hand, Shri R.K. Upadhyay, the learned counsel for the Department has justified the impugned order passed by the Tribunal. He submits that the surrender was not voluntarily, so the penalty is justifiable. To support his argument, he relied on the ratio laid down in the following cases :-

(a) K.P. Madhusudhanan Vs. CIT 2001 (251) ITR 99 (SC); and

(b) Karanvir Singh Gossal Vs. CIT [2012] 349 ITR 692 (SC).

We heard both the parties at length and on perusal of the material available on record, it appears that in the instant case, the assessee has surrendered the amount voluntarily to purchase peace. As per the then law, the penalty was not leviable, when the revised return was accepted by the A.O. as per the ratio laid down in the following cases :-

(a) CIT Vs. Shyam Lal 276 ITR 156 (MP); and

(b) CIT Vs. Steel Processor 286 ITR 315 (Karnataka)

The ratio laid down in the case of ***Makdeta Vs. CIT (2013) 358 ITR 593 SC*** is not applicable as the surrender was voluntarily.

In the instant case, it appears that the each deposit was less than Rs. 20,000/- which is meager amount. The assessee might have contested it on merit, but to purchase peace, he has surrendered the amount, which was accepted by the Department. Thus, the amount was surrendered voluntarily just to avoid any litigation. When it is so, then the penalty is not attributed as per the ratio laid down in the case of ***CIT Vs. Kiran & Co. 217 ITR 336 (Bombay).***

In the peculiar circumstances of the case, lenient view is to be taken as per CBDT Circular No. 451 dated 17.2.1986 as well as the ratio laid down in the case of ***Shri Shyam Oil Co. Vs. CIT 286 ITR 251 (MP)***.

In view of the above, we set aside the impugned order passed by the authorities below and cancelled the levy of the penalty. The answer to the substantial questions of law is in favour of the assessee and against the Department.

In the result, the appeal filed by the assessee is **allowed**.

Order Date :-17.09.2014
Anurag/-

(Dr. Satish Chandra, J.) (Tarun Agarwala, J.)