

I.T.A. No. 57 of 2008

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

I.T.A. No. 57 of 2008

Date of decision: 11.04.2008

The Commissioner of Income Tax, Karnal

..... Appellant-revenue

Versus

Sh. Amar Nath c/o M/s Shiv Shankar Rice Mills, Kaithal

..... Respondent-assessee

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE RAKESH KUMAR GARG**

Present:- Mr. Yogesh Putney, Advocate
for the appellant-revenue.

RAKESH KUMAR GARG, J.

The revenue has filed the present appeal under Section 260-A of the Income-Tax Act, 1961 (hereinafter referred to as the "I.T. Act") against the order dated 05.04.2007 passed by the Income-Tax Appellate Tribunal, Chandigarh, Bench-'B' (hereinafter called the Tribunal) in I.T.A. No. 592/Chandi/2006 for the assessment year 2004-05,raising the following substantial question of law:-

“Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in upholding the order of the CIT(A), against imposition of penalty u/s 271(1)(c) of the Income Tax Act, 1961, without deliberating upon, discussing and analysing the reasons, as spelt out and discussed in para 4 of the penalty order and relying on the after thought considered by the Ld. CIT (A), while deleting the penalty imposed under Section 271(1)(c) of the Income Tax Act.”

The return declaring an income of Rs.16,720/- was filed by the assessee on 31.10.2004, which was processed under Section 143(1) of the I.T. Act. The case was picked up for scrutiny and it was found that the assessee had claimed profit on sale of shares, which was purchased by him on 06.09.2002, for exemption under Section 10(36) of the I.T. Act. The assessee was asked to explain why he claimed profit exempted under Section 10(36) of the IT Act when he had purchased shares before 1st March, 2003. In the reply filed by the assessee, it was stated that he was under the bona fide belief that profit on the sale of these shares was exempt under Section 10(36) of the I.T. Act and nothing in this regard has been concealed by him and this bona fide belief was based on the advice of his counsel. However, the

Assessing Officer did not accept the contention of the assessee and held that a wrong claim was made by the assessee by furnishing inaccurate particulars of his income as the profit on sale of shares was not exempt under Section 10(36) of the I.T. Act. Vide order dated 29.07.2005 additions were made on this account and penalty proceedings were initiated separately against the assessee. A penalty of Rs.3,10,716/- was imposed upon the assessee, under Section 271(1)(c) of the I.T. Act, by Assistant Commissioner of Income-tax, Circle, Kurukshetra (hereinafter referred to as 'CIT(A)'), vide order dated 30.01.2006.

Aggrieved against the said order, assessee filed an appeal before the Commissioner of Income Tax (Appeals) Karnal, who vide its order dated 25.05.2006, partly allowed the appeal and reduced the penalty to Rs.2,87,133/-.

Not feeling satisfied with the order of CIT(A), the revenue filed an appeal before the Tribunal on the ground that the assessee had wrongly claimed exemption under Section 10(36) of the I.T. Act as the said provisions were not applicable to the facts of the assessee's case and therefore, he had concealed his income by furnishing inaccurate particulars and therefore, the assessee is liable for imposition of penalty. The Tribunal, vide its order dated 30.03.2007 dismissed the appeal of the revenue-department.

Still dissatisfied with the order of Tribunal, the revenue has filed the present appeal.

We have heard learned counsel for the appellant-revenue and perused the record.

In the present appeal, it is noticed that the assessee had claimed wrong deduction on the advice of his counsel and in this regard, an affidavit of counsel for the assessee was also filed before the CIT(A). The then counsel of the assessee had categorically admitted that he had advised the assessee to claim deduction under Section 10(36) of the IT Act in respect of the shares sold during the financial year 2003-04. However the revenue has not rebutted the said affidavit at any stage. Thus, the assessee acted upon the advice of his counsel. In the case of **Manoj Ahuja and another v. Inspecting ACI, 150 ITR 696 (P&H)** wherein this Court has held that no litigant should ordinarily suffer for the mistake of his counsel. It is also to be noticed that since the assessee had furnished all the details relating to the capital gains along with return of income, so it cannot be said that the assessee had concealed anything from the revenue. Therefore, this may be a good case for making addition against the assessee since he had made a wrong claim. However, this addition in itself is not sufficient for levying the penalty

under Section 271(1)(c) of the IT Act. In view of the fact that the assessee had claimed the said deduction under a bonafide belief that he is entitled to the said deduction on the basis of legal advice given by his counsel and that he had furnished all the details relating to the capital gains along with return of income, it cannot be held that there was any mala fide intention of the assessee to conceal the income.

Considering the totality of the case and in the light of the above discussion, we are of the view that there is no error in the impugned order of the Tribunal. No question of law is arising for determination of this Court in this appeal and the same is hereby dismissed.

सत्यमेव जयते (RAKESH KUMAR GARG)
JUDGE

(SATISH KUMAR MITTAL)
JUDGE

11.04.2008
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