HMT Ltd. Vs Commissioner of Income Tax

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 12, 2004

Acts Referred: Income Tax Act, 1961 â€" Section 203, 260A, 272A

Citation: (2004) 191 CTR 62

Hon'ble Judges: N.K. Sud, J; Adarsh Kumar Goel, J

Bench: Full Bench

Advocate: Pardeep Kapoor, for the Assessee A.S. Tewatia, for the Revenue, for the Appellant;

Judgement

N.K. Sud, J.

Assessee has filed this appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act), against the order of the ITAT,

Chandigarh Bench, Chandigarh (hereinafter referred to as the Tribunal), dated 22-7-2003. The Tribunal has allowed revenues appeals against the

order of the Commissioner (Appeals), dated 25-7-2002 for financial years 1995-96 and 1996-97 and upheld the levy of penalty u/s 272A(2)(g)

of the Act.

2. On 13-1-2004 counsel for the assessee was asked to explain as to how one appeal was maintainable against the order of the Tribunal in two

appeals for different assessment years. Counsel submitted that the present appeal be treated for assessment year 1995-96. Accordingly, we

proceed to decide the same.

3. Assessee had deducted tax at source out of payments made to 8 contractors. Under the provisions of section 203 read with rule 31 of the

Income Tax Rules, 1962, it was required to issue tax deduction certificate in Form No. 16A to the said parties within the prescribed time.

However, the said forms were issued late as per details given below :

S. Name of the contractor Due date of Date of Delay in

No. issue of Form issue issuing Form

No. 16A 16A

1. Hansraj Rahul Kumar 31-8-1995 17-6- 289 days

1996

2. H.C.L. Ltd. 30-9-1995 -do- 259 days

3. Y.R. Kaura & Co. 31-3-1996 -do- 75 days

4. Forbes Gokak Ltd. 31-10-1995 -do- 228 days

5. Gannon Dunkerley & Co. Ltd. 30-4-1996 -do- 47 days

6. Sharma Electric Works -do- -do- 47 days

7. Vilas Transport Co. -do- -do- 47 days

8. Royal Clearing Agency -do- -do- 47 days

Total number of days of default 1,039 days

The assessing officer required the assessee to explain as to why penalty u/s 272A(2)(g) of the Act be not levied on account of the abovementioned

default. The assessee furnished a written submission, inter alia, contending as under :

1. That the annual TDS return was filed duly in time i.e., on 27-6-1997, for the financial year 1996-97 along with Form No. 16A and the TDS

duly deposited in time.

2. That the delay in issuing the Form No. 16A was due to the reason that the HMT, Pinjore, is branch of HMT Ltd., a Government of India

undertaking, which is a big organisation having about 5,000 employees and has to submit the branch audited accounts in time to the head office for

compilation of annual accounts of HMT Ltd. and for further submission to the Government of India well in time. Due to this reason most of the staff

remain busy in the job of finalisation of work which is to be completed by 31st of May of each year pertaining to concerned financial year ending

on 31st March. Further, large number of certificates involving TDS on crores of rupees are to be issued by the disbursing officials.

3. That there is no mala fide and intentional delay on the part of disbursing officials and the organisation; concerned officials do not draw any

benefit by making such delays.

4. That we have always been submitting the returns and depositing the tax well in time and we have, not received any grievances from any

employees, contractor or dealer for late issue of certificate or for any loss incurred by them.

The assessee also placed reliance on certain decisions of the Tribunal in various cases to show that the default was merely technical in nature as

there was no loss of revenue involved at all and even the contractors had not raised any grievance about late issue of the certificates. This

explanation did not find favour with the assessing officer, who levied a penalty of Rs. 1,03,900 which is equal to Rs. 100 per day for failure of

1,039 days.

4. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner (Appeals), Shimla, who accepted the explanation of the

assessee. He observed that appellant is a government undertaking having more than 5,000 persons requiring to be issued tax deduction certificates

in Form No. 16/16A and there is a delay in issuing the certificates in only 8 cases. He, therefore, held that there was no mala fide intention in

delaying the issue of said forms nor was there any loss of revenue involved in the matter. Accordingly, he allowed the appeal and cancelled the

penalty.

5. Revenue filed an appeal before the Tribunal against cancellation of penalty by the Commissioner (Appeals) which has been allowed vide the

impugned order.

6. Mr. Pradeep Kapoor, learned counsel for the appellant, contended that a perusal of the order of the Tribunal shows that it has reversed the

findings of the Commissioner (Appeals) mainly on the ground that the Commissioner (Appeals) had wrongly accepted the explanation of the

assessee that it had to issue tax deduction certificates to 5,000 persons whereas order of the Tribunal clearly showed that the tax had been

deducted in respect of 8 persons only. He pointed out that it had duly been explained by the assessee that it was only a branch of the HMT Ltd.

which had more than 5,000 employees. Tribunal has failed to appreciate that tax deduction certificates were to be issued not only to 8 persons, but

also to the employees as well as to the creditors as the tax at source is deducted out of the salary and interest as well. He further pointed out that

default, if any, was purely technical or venial in nature involving no loss of revenue and, therefore, no penalty is exigible in view of the law laid down

by the apex court in Hindustan Steel Ltd. Vs. State of Orissa, He also highlighted the fact that none of the contractors had raised any grievance

against the delay. in issuing tax deduction certificates which are required by them only for filing their Income Tax returns, due date for which was

much beyond 7th June, 1996 when the certificates were issued.

7. Mr. A.S. Tewatia, learned counsel for the revenue, on the other hand, supported the order of the Tribunal.

8. Having heard the learned counsel for the parties and having perused the orders of the authorities below, we are satisfied that it is not a fit case

for levy of penalty.

9. It is not disputed that the assessee is a branch of a big Government of India undertaking, HMT Ltd., having thousands of employees. It has been

correctly pointed out that it has to issue tax deduction certificates not only in respect of payments to 8 contractors, but also to its employees and

creditors in respect of tax deducted out of salary as well as interest. Thus, there was no contradiction in the explanation furnished by the assessee

that it had to issue certificates to more than 5,000 persons. The Tribunal while reversing the findings of the Commissioner (Appeals) appears to

have been swayed by the fact that tax had been deducted only in respect of 8 contractors and thus, the assessee was to issue only 8 certificates.

10. In the present case, the tax deducted at source had been paid in time and the necessary return in respect of the same was duly filed in time with

the IT department. No loss of revenue has occurred on account of late issue of tax deduction certificates. None of the contractors has raised any

grievance on account of late supply of the certificate. Keeping in view these facts and especially that the default is merely technical or venial in

nature, we are satisfied that it is not a fit case for levy of penalty. For this purpose, we find support from the observations of the Supreme Court in

Hindustan Steel Ltd."s case (supra) which reads as under :

An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily

be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in

conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for

failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant

circumstances. Even if minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty,

when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not

liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer

acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out.

In view of the above, we set aside the order of the Tribunal and restore the order of the Commissioner (Appeals). The appeal stands allowed.

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