

(2008) 04 P&H CK 0055

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax

APPELLANT

Vs

Balwant Rai

RESPONDENT

Date of Decision: April 11, 2008**Acts Referred:**

- Income Tax Act, 1961 - Section 131, 142, 260A, 271, 69

Citation: (2009) 221 CTR 573 : (2008) 174 TAXMAN 325**Hon'ble Judges:** Satish Kumar Mittal, J; Rakesh Kumar Garg, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Rakesh Kumar Garg, J.

The revenue has filed the present appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Income Tax Act") against the order dated 20-5-2007 passed by the Income Tax Appellate Tribunal, Delhi Bench "SMC," Delhi (hereinafter called the Tribunal) in ITA No. 3475/Del/2006 for the assessment year 2003-04, raising the following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in cancelling the penalty levied u/s 271(1)(c) of the Income Tax Act by ignoring that the surrender of income of Rs. 2,67,155 forming basis of penalty was not voluntary in good faith but was only when cornered from all angles about the unexplained investment in purchase of Sarson?
2. Whether on the facts and in the circumstances of the case, the learned Tribunal was right in cancelling the penalty on erroneous factual findings?
2. A Flying Squad of Market Committee, Sirsa checked the stock of respondent assessee on 12-3-2003 and excess stock of Sarson was found, for which composition fee, fine and penalty were imposed. On the basis of this information, notice dt,

27-8-2004 u/s 142(1) of the Income Tax Act was issued to assessee. The return of income was filed on 16-5-2005 declaring an income of Rs. 39,190. The assessee was required to explain the source for which the excess stock detected by the Market Committee was made. Ultimately, the assessee came forward with the proposals for surrendering the value of excess stock subject to no penal action, which was not accepted by the assessing officer and addition of Rs. 2,67,155 on account of unexplained investment in excess stock of Sarson was made by him vide order dated 17-6-2005. Penalty proceedings u/s 271(1)(c) of the Income Tax Act were also initiated against the assessee. The Income Tax Officer, Ward-2, Fatehabad vide order dated 23-3-2006 imposed penalty to the tune of Rs. 84,155 u/s 271(1)(c) of Income Tax Act upon the assessee.

3. Appeal filed by the assessee challenging order dated 23-3-2006 imposing penalty upon him, was dismissed by the Commissioner (Appeals), Rohtak, vide order dated 17-8-2006.

4. Still dissatisfied with the order of Commissioner (Appeals), Rohtak, the assessee filed further appeal before the Tribunal, who vide its order dated 25-5-2007, accepted the appeal and set aside the order of the lower authorities and cancelled the penalty of Rs. 84,155, levied by the assessing officer u/s 271(1)(c) of the Income Tax Act.

5. Aggrieved against the order of the Tribunal, the revenue has filed the present appeal.

6. Mr. Yogesh Putney, learned Counsel for the revenue has argued that the findings of the Tribunal are contrary to the facts available on record. He has further argued that the assessee had not been able to adduce any evidence in assessment as well as penalty proceedings to rebut that the appellant/assessee had unaccounted stock on which composition fee was paid by him to the Market Committee. He further argued that the bona fide of the respondent/assessee is doubtful as he has neither deliberately shown the true stock nor discharged the onus of proving the genuineness of the purchase of Sarson from the agriculturists.

7. We have heard learned Counsel for the appellant revenue and perused the record.

8. After perusing the documents placed on record, the Tribunal has given a finding that the assessing officer had not verified the contention of the assessee appellant that the stock is verifiable from the books of account. There was no unexplained investment made for the purchase of said Sarson in order to attract the provisions of Section 69 of the Act. The Tribunal also found that the assessing officer had not given clear findings to show that the alleged stock was outside the books of account and the appellant had made surrender for the stock found by the Flying Squad of Market Committee, in order to purchase peace of mind. The Tribunal also found that the assessing officer had proceeded only on the basis of information collected from

the Market Committee and he had not verified the contention of respondent assessee that the stock is verifiable from the books of account. The Tribunal also found that the respondent has discharged his liability by placing on record affidavits filed by the agriculturists to show the genuineness of the transaction and that was not disputed. Undisputedly they were not summoned by the department u/s 131 of the Act and thus the revenue failed to adduce evidence to contradict the claim of the assessee respondent and he simply rested his conclusion on the act of voluntary surrender done by the appellant in good faith. The circumstances do not lead to the reasonable and positive inference that the assessee's explanation is false. Thus, we find no ground to interfere in the well reasoned order passed by the Tribunal. No questions of law are arising for determination of this court in this appeal and the same is hereby dismissed.