(2001) 08 P&H CK 0179

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Appeal No. 89 of 2000 7 August 2001 A.Y. 1983-84

Commissioner of Income Tax		APPELLANT
	Vs	
AJAIB SINGH and CO.		RESPONDENT

Date of Decision: Aug. 7, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 271

Citation: (2001) 170 CTR 489

Hon'ble Judges: Jawahar Lal Gupta, J; Jawahar Lal Gupra, J; Ashutosh Mohunta, J

Bench: Full Bench

Advocate: R.P. Sawhney with Rajesh Bindal, for the Revenue None, for the Assessee, for the Appellant;

Judgement

Jawahar Lal Gupta, J.

Has the Tribunal erred in holding that no penalty was leviable u/s 271(1)(c) of the Income Tax Act, 1961 ? This is the short question that arises for consideration in this case.

2. A few facts may be noticed.

The assessee is running a brick-kiln. In the Income Tax return for the year 1983-84 the assessing officer made an addition of Rs. 78,000 to the assessees trading account. He made another addition of Rs. 6,156 on account of sales-tax and Rs. 9,738 by disallowing the claim regarding payment of royalty. Thus, a total addition of Rs. 93,894 was made. The assessee filed an appeal before the Commissioner (Appeals). The additions were confirmed. Not satisfied with the order, the assessee filed a second appeal before the Tribunal. On consideration of the matter, the Tribunal found that "It will meet the ends of justice if an addition of Rs. 40,000 is sustained" in the trading account. So far as the payment of sales-tax is concerned, a deduction of Rs. 1,956 was allowed. The addition on account of royalty was

sustained. Thus, relief to the extent of Rs. 39,956 was allowed to the assessee. The revenue did not challenge the order passed by the Tribunal.

The assessing officer vide order dated 10-6-1991, imposed a penalty of Rs. 60,000. Aggrieved by the order, the assessee filed an appeal which was partly allowed by the Commissioner (Appeals). The assessee approached the Tribunal. Vide its order dated 6-10-1999, the Tribunal found that the addition of Rs. 40,000 had been sustained "on estimate basis ....." Similarly, it was further found that even the addition of Rs. 4,200 on account of sales-tax liability involved a "matter of debate ....." It held that the claim made by the assessee in respect of the sales-tax "may have been under erroneous understanding of law but it cannot lead to the conclusion of concealment on the part of the assessee." Thus, it was held that penalty was not leviable.

Aggrieved by the order of the Tribunal by which the levy of penalty has been annulled, the revenue has filed the present appeal.

3. Mr. Sawhney, learned counsel for the appellant, contends that the case falls squarely within the mischief of section 271(1)(c) of the Income Tax Act, 1961. He relies on Explanation 1 to support the claim. Reference has also been made to the decision of the Apex Court in Commissioner of Income Tax (Additional), Lucknow Vs. Jeevan Lal Sah, and to the decision of the Madhya Pradesh High Court in Commissioner of Income Tax (Additional) Vs. Smt. Chandrakanta and Another, .

4. The short question that arises isDid the assessee conceal the income so as to entitle the revenue to impose penalty ?

5. A perusal of the order passed by the Tribunal dated 31-7-1998, shows that the assessee had claimed expenses on account of the cost of coal and labour charges, etc. According to the assessee, it had paid for the purchase of coal at the rate of Rs. 779.82 per metric tonne. The assessing officer had taken the view that the expense on account of the price of coal was higher than the average rate of purchase disclosed by another assessee. In response to this it was pointed out by the assessee that its brick-kiln was "situated at a further distance of 40 kms and, therefore, transport charges were bound to be higher". Similarly, with regard to the labour charges, etc., it had been pointed out that the assessee was making tiles which required greater effort and thus there was a higher cost.

The revenue did not dispute that the assessees brick-kiln was located at a longer distance from the rail-head than that of the other assessees. The assessees claim that it had made and sold tiles was also proved. In view of these facts, the Tribunal had granted a relief of Rs. 38,000 to the assessee. Similarly, the assessees claim with regard to the payment made by it on account of penalty and additional levy of sales-tax was partly allowed. In both cases the expenses as claimed by the assessee was reduced. However, it was not held that there was any concealment of income by the assessee.

6. Mr. Sawhney contends that the case of the assessee shall fall within the mischief of section 271(1)(c) of the Income Tax Act, 1961, as it had furnished "inaccurate particulars of its income". The contention is misconceived. Merely because certain expenses claimed by the assessee are disallowed by an authority cannot mean that the particulars furnished by the assessee are wrong. This is all the more so in view of the Tribunals finding that the expense was assessed on estimate basis and the admissibility of payment of sales-tax/penalty was debatable.

7. We may add that disallowance of an expense per se cannot mean that the assessee has furnished incorrect particulars of its income. Concealment involves penal action. It has to be proved as a conscious act. It is true that direct evidence may not be available in every case. Yet, it must be proved as a necessary corollary from the facts and circumstances established on the record.

8. Faced with this situation, Mr. Sawhney submits that the assessees case is covered by Explanation 1. Is it so ?

9. The essential precondition for invoking the Explanation to the provision is that the assessee "fails to offer an explanation or offers an explanation which is found by the assessing officer or the Commissioner (Appeals) to be false". It is only in such a situation that the assessing officer can invoke the Explanation and impose penalty. However, in the present case the assessee had offered a plausible explanation and this explanation has not been found to be false. On the contrary it has been partly accepted. Thus Explanation 1 does not in the facts and circumstances of this case, furnish any ground for the levy of penalty.

10. Mr. Sawhney submits that in view of the decision of their Lordships of the Supreme Court in Jeevan Lal Sahs case (supra) the assessee should be deemed to have concealed his income. We have perused the judgment. It is undisputedly correct that in view of the provision which fell for their Lordships consideration a presumption that the assessee had concealed the particulars of his income could arise. However, as held by their Lordships, the presumption is not absolute. It is rebuttable. Still further, the assessee was held entitled to prove "that the failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part". In the present case, if this rule is applied, the inevitable conclusion is that the assessee had not only given a debatable explanation, but also that it had committed no fraud or wilful neglect. Thus, the revenue can derive no advantage from this decision in the present case.

11. Learned counsel had then referred to the decision in Chandrakantas case (supra). This case is clearly distinguishable on facts. Herein the assessee had filed a return showing a loss of Rs. 50,000. Later on, he had filed a revised return showing a profit of Rs. 7,500. Such is not the position in the present case at all. There is no parallel between the case where a return showing loss is changed into one of profit by the assessee and another case where the revenue disallows certain expenses

incurred by the assessee.

12. No other point has been raised.

13. In view of the above, we find that the view taken by the Tribunal is just and fair. It was a possible view. The case of the assessee does not fall within the mischief of section 271(1)(c) of the Income Tax Act, 1961. No substantial question of law as envisaged u/s 260A of the Income Tax Act, 1961, arises. Thus, no ground for interference is made out. Resultantly, the appeal is dismissed in limine.