
(2006) 12 AHC CK 0075

Allahabad High Court

Case No: IT Reference No. 86 of 1998

Commissioner of
Income Tax, Lucknow

APPELLANT

Vs

Anjani Pharma

RESPONDENT

Date of Decision: Dec. 12, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 139(1), 139(4), 142(1)(i), 256(1), 271B

Hon'ble Judges: Vikram Nath, J; R.K. Agrawal, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 for opinion of this Court:-

Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in canceling the penalty of Rs. 40,314 imposed u/s. 271B of the I.T. Act, 1961 by holding that no penalty under the said section is exigible for failure to furnish the audit report u/s 44AB along with the return u/s 139(1) of the Income Tax Act, 1961?

The reference relates to the assessment year 1991-92.

2. Briefly stated the facts giving rise to the present reference are as follows:-

The assessee is a registered-firm, Return was filed on 7.2.1992. As the turnover of the assessee during the previous year relevant to assessment year 1991-92 exceeded forty lakhs rupees, a legal obligation rested upon the assessee to get his accounts audited before 31.10.1991, to obtain audit report before 31.10.1991 and to furnish the said report along with return of income filed u/s 139(1). As the assessee failed to comply with the statutory requirement of furnishing the audit report along with return u/s 139(1), the

Assessing Officer levied a penalty of Rs. 40,314 u/s 271B of the Income Tax Act.

3. In appeal before C.I.T. (Appeals), the assessee took the plea that as the return was filed by him u/s 139(4), provisions of section 271B and upheld the penalty imposed by the Assessing Officer.

4. The Tribunal cancelled the penalty holding that legally penalty u/s 271B could be levied only if the return had been filed u/s 139(1) or section 142(1)(i) of the Act. No penalty was leviable when the return was filed u/s 139(4).

5. We have heard to learned Standing Counsel for the Revenue. The question referred to this Court is squarely covered by the decision of this Court in the case of [Commissioner of Income Tax Vs. Jai Durga Construction Co.](#), wherein this Court has held that prior to 1995 i.e. before the amendment made in Section 44AB by the Finance Act, 1995 no penalty was leviable on the ground that Audit Report though obtained before due date was not filed along with the return. We are, therefore, of the considered opinion that the order of the Tribunal is in conformity with the decision of this Court. In view of the aforesaid discussion we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue.