

Court No. - 37

Case :- INCOME TAX APPEAL No. - 89 of 2000

Petitioner :- The Commissioner Of Income Tax And Anr.

Respondent :- M/S S.K. Gupta & Co.

Petitioner Counsel :- A.N. Mahajan,A.Kumar,B.J.Agarwal,D. Awasthi,G. Krishna,R.K. Upadhyay,S.Chopra

Hon'ble R.K. Agrawal,J.

Hon'ble Shashi Kant Gupta,J.

The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') against the order dated 2.9.1999 passed by the Appellate Tribunal, New Delhi. The appeal has been admitted on the following substantial question of law vide order dated 13.11.2006;

"Whether, on facts and in the circumstances of the case, the Ld. ITAT was legally correct in holding that there was a reasonable cause for not getting the accounts audited as no account were maintained, and thus the assessee could not be penalised both u/ss 271-A and 271-B of I.T. Act, whereas the assessee being a contractor having total receipt from contract work at Rs. 1,24,69,486/- has failed to maintain books of accounts and has not got his accounts audited u/s 44AB of the I.T. Act. Thereafter, the assessee has violated the provisions contained in both the section and he is liable for penal action both u/s 271A & 271B of the I.T. Act, 1961?"

Briefly stated the facts giving rise to the present appeal are as follows;

The appeal relates to assessment year 1990-91. The respondent assessee was a firm which had been granted registration under Section 185 (1) (a) of the Act for the assessment year 1985-86. It is engaged in the construction work. It had not maintained any books of account. The receipts from contract business was to the tune of Rs. 1,24,69,486/-. As the assessee had not maintained any books of account, it did not get its books of account audited nor submitted any audit report while filing the return on income. Penalty proceedings under Section 271B of the Act was initiated by the Assessing Authority who vide order dated 23.5.1991 imposed a some of Rs. 62,350/- as penalty for not getting the accounts audited. The assessee feeling aggrieved preferred appeal before the Commissioner of Income Tax (Appeals) who vide order dated 28.7.1993 cancelled the penalty which order has been upheld by the Tribunal.

We have heard Sri A. N. Mahajan, learned Standing Counsel for the Revenue and Sri R. R. Kapoor,learned counsel appearing for the respondent assessee.

Sri Mahajan contended that the Tribunal has erred in law while upholding order of the CIT appeals cancelling the penalty inasmuch as the assessee had failed to get its books of account audited.

The submission of Sri Mahajan is misconceived for the reason that the requirement of getting the books of account audited could arise only where the books of accounts are maintained. If for some reason the assessee has not maintained the books of account appropriate provision under which penalty

proceedings can be initiated is under Section 271A of the Act which recourse has also been taken by the assessee as would appear from the order of the Tribunal.

The Tribunal was, therefore, justified in upholding the order of the CIT (Appeals) cancelling the penalty imposed under section 271B of the Act.

The appeal fails and is, therefore, dismissed.

Order Date :- 10.9.2009

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