

Court No. 37

01. Income Tax Appeal No. 150 of 2001
Commissioner of Income-tax, Kanpur v. Shri Rajeev Seth, Kanpur
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Hon'ble Yatindra Singh,J.
Hon'ble Prakash Krishna,J.

These are twenty appeals. These appeals arise out of penalty proceedings initiated under Section 271(1)(a) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The appeals relate to the assessment years 1984-85 to 1988-89.

Shri Anoop Seth, Shri Rajeev Seth, Shri Chhotey Lal Seth and Shri Jagan Nath Seth were partners in a firm M/s Jagan Nath & Co. A search was carried in the premises of the said firm on 17th November, 1992 and some assets and documents were seized. On the basis of seized materials, the assessments were made in the case of the firm and in the case of the partners also. Thereafter, penalty proceedings were initiated against aforesaid four partners for non filing of the return, under Section 271 (1) (a) of the Act.

In response to the show cause notices, the assessee submitted that they could not file the return as the assessment of the firm was not finalized. It was further pleaded that they were under the impression that their income are below the taxable limit. Plea that no penalty could be levied on them as the penalty has also been levied on the firm, was also pressed.

The assessing officer levied the penalty by invoking the aforesaid section i.e. 271(1)(a) of the Act.

The assessee carried the matter in appeals. The appeals were allowed by the C.I.T. (a). A detail order was passed by the C.I.T.(A) in appeals filed by Shri Rajeev Seth. The said order was followed in the cases of other assessee also. The department carried the matter in second appeals before the Income Tax Appellate Tribunal (the Tribunal). As many as twenty appeal were filed by the department and all those appeals have been disposed of by a common order and judgment dated 30th May, 2001.

In the memo of appeals, the department has raised the following questions of law:

“1. That the Ld. CIT(A) has erred in law and on facts in allowing the appeal filed by the assessee and cancelling the penalty u/s 271(1)(a) of I.T. Act, 1961 of Rs.75974/- imposed by the Assessing Officer, without appreciating the fact that despite number of opportunities given to the assessee including notice issued u/s 148 and 142(1) of the I.T. Act, 1961 neither the assessee made any compliance to the notices issued nor filed his return of income.

2. That the Ld. CIT(A) has erred in law and on facts in cancelling the penalty without appreciating the facts fo the case as detailed in penalty u/s 271(1)(a) of the Act.”

Heard Shri Shambhu Chopra, learned senior standing counsel for the department.

A bare perusal of the order of the Tribunal would show that the Tribunal by the order under appeal has found the explanation furnished by the assessee as sufficient.

The Tribunal has placed reliance upon a judgment of this Court in ***Additional Commissioner of Income-tax, Lucknow vs. Smt. Triveni Devi, (1974) 97 ITR, 390***, wherein this Court has held that when a penalty has been levied on the firm for non filing of the return, no penalty could be levied on the partners. However, learned counsel submits that in view of the following decisions, the order of the Tribunal cannot be allowed to be sustained:

- 1. Outdoor Publicity vs. Commissioner of Income-tax & another (1999) 237 ITR 401.**
- 2. Shiv Chand Dalmia & others vs. Commissioner of Income-tax (1999) 237 ITR 809.**

We have given careful consideration to the submissions of the learned counsel for the department. In the case of Outdoor Publicity (supra), the explanation of the assessee that the account could not be finalized because accounts of individual businesses of the partners had not been completed, was not accepted. In other words, the explanation furnished by the assessee

was not accepted and the levy of penalty under Section 271(1)(a) of the Act was held valid. It is a case where the explanation of the assessee was not found satisfactory. Except that no proposition of law has been laid down therein.

Similarly, in the case of Shiv Chand Dalmia (supra), the explanation given by the assessee for non filing the return within time was not found satisfactory and levy of penalty was held valid.

In our considered view, both the decisions relied by the learned senior standing counsel for the department are distinguishable on facts and have no application to the cases on hand.

We find that the decision of the Division Bench of this Court in the case of ***Additional Commissioner of Income-tax, Lucknow vs. Smt. Triveni Devi***, has been followed by the other High Courts as well. Reference can be made to ***Madan Lamba vs. Commissioner of Income-tax, New Delhi (1983) 139 ITR 849***. In this case, the delay in filing the partners return on the ground that there was delay in finalization of firm's account, was held sufficient. The judgment of this Court in the case of ***Additional Commissioner of Income-tax, Lucknow vs. Smt. Triveni Devi*** (supra) besides the other cases, have been relied upon.

In ***Commissioner of Income-Tax M.P. v. Shri Krishandad Agarwal and others, (1983) 143 ITR 798***, a Division Bench of Madhya Pradesh High Court has held that under Section 271 of the Income Tax Act, the authorities have discretion to impose or not impose penalty. If it is found that there is only a technical or venial breach of the law or that it would be unjust to impose penalty, the authorities may exercise their discretion in favour of the assessee by not imposing penalty.

In ***Commissioner of Income Tax vs. Md. Ehtesam & another (2004) 270 ITR 319***, a Division Bench of Patna High Court has followed the decision of this Court in the case of ***Additional Commissioner of Income-tax, Lucknow vs. Smt. Triveni Devi*** and has held that firm is not legal entity even

though it has some attributes of personality. It is settled law that penalty is an additional tax and in a case where the only source of the partner is income from the firm and the firm has been imposed penalty for not filing the return in time under Section 271 (1) (a) of the Income Tax Act, 1961, then that will amount to imposing a penalty on the partners and the partners again cannot be penalized under Section 271 (1)(a) of the Act for not filing the return within reasonable time.

The assessment order would show that the assessee has share income from firm M/s Jagan Nath & Co. and also some interest income.

We find that the Tribunal has recorded findings of fact holding that there were sufficient reasons for the assessee for non filing the return within time.

Besides the above, the assessment of the firm was not finalized and the assessee has share income from firm M/s Jagan Nath & Co. In view of the above discussions, we do not find any legal error in the order under appeal and hold that the Tribunal was justified in confirming the order of the CIT (A) setting aside penalty order.

We find that no substantial question of law is involved in these appeals.

All appeals are, hereby, dismissed.

Date: 22.12.2010

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