

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.16 of 2010 & other connected
cases being ITA Nos.17, 42 & 43 of 2010
Date of decision : 15.7.2010

The Commissioner of Income Tax, Faridabad

.....Appellant

Vs.

Fateh Singh (HUF)

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present:-Ms. Urvashi Dhugga, Advocate, for the appellant

Mr. Avinash Jhingan, Advocate, for the respondent

ADARSH KUMAR GOEL (J):-

1. This order will dispose of ITA Nos. 16, 17, 42 & 43 of 2010, filed by the appellants, as learned counsel for the parties state that common question of law is involved in all these appeals. The facts are being taken from ITA No.16 of 2010.

2. ITA No.16 of 2010 has been preferred under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 11.5.2009 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi in ITA No.281/Del of 2008 for the Assessment Year 1998-99, proposing the following substantial questions of law;

(i)Whether on the facts and in the circumstances of the case, the

ITAT was right in law in confirming the order of the learned CIT

(A) in deleting the penalty of Rs.11,41,889/-levied by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 in view of judgment of Apex Court as the entire controversy on the year of taxability of enhanced compensation and interest thereon has now come to rest with the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Faridabad vs. Ghanshyam (HUF) reported in (2009) 315 ITR 1, wherein it has held that the year in which enhanced compensation is received is the year of taxability ?

(ii)Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in confirming the order of the learned CIT(A) in deleting the penalty of Rs.11,41,889/-levied by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 even though the penalty is leviable on contravention of the provisions of a civil statute like Income tax Act and it is settled law that breach of a civil obligation attracts levy of penalty whether the contravention was made by the defaulter with any guilty intention or not and in contradiction to the judgment of the Hon'ble Supreme Court in the case of Union of India and others Vs. Dharmendra Textiles Processors and others (2008) 306 ITR 277 (SC) ?

(iii)Whether on the facts and in the circumstances of the case learned ITAT was right in law in confirming the order of the learned CIT (A) in deleting the penalty of Rs.11,41,889 levied by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 in respect of addition made under Section 45 (5) in assessee's income

which had already been confirmed by the learned ITAT ?

(iv) Whether on the facts and in the circumstances of the case the learned ITAT was right in law in confirming the order of the learned CIT(A) in the light of Hon'ble Supreme Court's decision in the case of Commissioner of Income Tax, Faridabad Vs. Ghanshayam (HUF) reported in (2009) 315 ITR 1 which overruled the decision of Punjab & Haryana High Court on which the learned ITAT had relied upon and the department had restrained itself not on merits of the case but on the basis of the appeal having less tax effect than the monetary limit allowed for filing on SLP to the Hon'ble Supreme Court ?

3. In the course of assessment, the Assessing Officer was of the view that the assessee had concealed particulars of income in respect of enhanced compensation received by the assessee for acquisition of his land under the provisions of Land Acquisition Act, 1894. On these basis penalty was levied. On appeal, the penalty was set aside by the CIT (A), which view was upheld by the Tribunal. It was held that interpretation of Section 45(5) of the Act had been debatable till the decision of the Hon'ble Supreme Court in Commissioner of Income Tax, Faridabad Vs. Ghanshayam (HUF) reported in (2009) 315 ITR 1. Prior to the said judgment, the view prevailing was that the enhanced compensation was not taxable till proceedings for determination of compensation were finalised. The CIT(A) referred to the law laid down by the Hon'ble Supreme Court in case of **CIT Vs. Hindustan Housing & Land Development Trust Ltd.**, 161 ITR 524 SC and order of this Court dated 17.1.2007 in CIT

Patiala Vs. Karanbir Singh, Rajinder Kuti, Patiala, ITR No. 26 of 1997 and finally observed as under;

"As the penalty proceedings being quasi criminal are different from the assessment proceedings, even though the additions have been made in the assessment proceedings, even though the additions have been made in the assessment order, the penal inferences cannot be necessarily drawn from them unless the deliberate act of furnishing of inaccurate particulars of income or their concealment is proven on the part of the AO in the fact of facts as well as the explanations tendered by the assessee. As the situation stands in this case, again the matter even though decided by the Special Bench of the learned Tribunal, Delhi, it is still under dispute and therefore, the disputed matters or additions as such do not attract the provisions of Section 271 (1)(c) of the Income Tax Act. Therefore, I am of the confirmed opinion that as far as the instant facts as well as law and judgments in the numerous cited instances quoted by the learned AR on the identical facts and circumstances here are concerned, the present case does not invite any penal provisions of the Income Tax Act under Section 271 (1) (c) and hence, the penalty levied at Rs.11,41,889/-under that section stands cancelled".

4. We have heard learned counsel for the appellant.
5. Learned counsel for the appellant submits that in view of

the judgment of the Hon'ble Supreme Court in Ghanshayam's case (supra) the taxability was clear and the assessee was liable for the penalty.

6. We are unable to accept the submission. The judgment of the Hon'ble Supreme Court in Ghanshayam's case (supra) is dated 16.7.2009 while the assessment in question is of the year 1998-99 and the assessment was completed on 14.1.2007. Penalty was levied on 22.5.2007. This being the position, the assessee could not have any intention to suppress the taxable income as held by the CIT(A) as well as ITAT.

7. No substantial questions of law arises.

8. Accordingly, these appeals are dismissed.

9. A photocopy of this order be placed on each file of the connected case.

(ADARSH KUMAR GOEL)
JUDGE

15th July, 2010
akm

(AJAY KUMAR MITTAL)
JUDGE