IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

ITR No. 12 of 1994

Decided on : 27th April, 2007

Janeshwar Lal Rajeshwar Lal ……Applicants

Versus

Commissioner of Income-tax …….Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta,J.

The Hon'ble Mr Justice Surinder Singh,J.

Whether approved for reporting ?[1] *No.*

For the applicant **Mr K D Sood, Advocate.**

For the Respondent **Ms.Vandana Kuthiala, Advocate.**

Deepak Gupta, J. (Oral)

The aforesaid Reference has been made to us to decide the following purported question of law:

> ***"Whether, on the facts and in the circumstances of the case, the Tribunal, while up holding penalty imposed u/s 271 (1)(a) of the Income Tax act, 1961, for each of the assessment years 1983-84 and 1984-85, was right in law in giving the finding that there was no reasonable and sufficient cause for not filing the return in time?***

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? Yes.***

In fact, *prima-facie*, in our opinion the question of law, as framed by the Tribunal, is not a question of law at all. However, since this question has been referred to us, we are answering the same.

The brief facts of the case are that the petitioner had admittedly not filed his returns within time, for the assessment years 1983-84 and 1984-85. The assessee filed the return for the assessment year 1983-84 on 7.8.1985, whereas the due date was 31.7.1983. For the assessment year 1984-85 the due date was 31.7.1984 but the return was filed on 9.8.1985. It appears that the returns were actually filed, after some survey was conducted and the assessee surrendered an income of Rs.1,00,000/- for each of the assessment years. A penalty of Rs.35,195/- was levied for late submission of the return for the year 1983-84 and Rs.18,385/- for the assessment year 1984-85. The assessee had filed appeals, against the orders of levying penalty, and these appeals being No. ITAs No.877 and 878 were dismissed on May 14, 1993 by the Income Tax Appellate Tribunal, hereinafter to

be referred as "the Tribunal". The Tribunal came to the conclusion that the assessee had not made any request for extension of time and also held that there was no material on record to support the case. The claim of the assessee was that one of the partners had suffered heart attack and thereafter the assessee filed an application for rectification of the order of Tribunal. Along with the application for rectification, the assessee had also placed on record the application filed in Form No.6 with the Income Tax Officer, B.Ward Shimla in which the assessee had prayed for extension of time to file the assessment. The relevant portion of the application reads as follows:

> "***It is, therefore, requested that time for furnishing return may be extended up to 30.9.1983 As the Managing partner is suffering from heart attach as such, trading account/P&L/Balance sheet could not prepared.***"

The Tribunal partly allowed the application and gave benefit of two months up to 30.9.1983 as prayed for by the assessee in the application for extension of time. Thereafter, the

assessee made an application, for reference, to this court and it is in this context that the reference has been made.

We have heard Mr K D Sood, learned counsel for the assessee and Ms. Vandana Kuthiala, Advocate, appearing on behalf of the revenue.

Mr Sood, learned counsel has contended that in the application for extension of time, it was clearly mentioned that the Managing partner of the firm is suffering from a heart attack and as such trading account/P&L/ balance sheet could not be furnished. On this basis he submits that if this explanation has been accepted for two months, there is no reason why it should not be accepted for the rest of the claim.

We are unable to accept this contention. The assessee had specifically prayed for extension of time up to 30.9.1983 which has been accepted by the Tribunal. There is no material on record to show that the Managing Partner was under treatment after 30.9.1983. There is no material on record to show that the Managing partner was not attending the business after 30.9.1983. If the assessee wants extension of time, he must place sufficient

material on record before the Assessing Officer along with requisite application to show that there was sufficient cause for condoning the delay for filing the return in this case. There is neither any prayer nor any explanation for extending the time after 30.9.1983. Therefore, in our considered view no extension of time could have been granted.

The reference is accordingly answered against the assessee. A Copy of this judgment under the signatures of the Registrar General of this Court be forwarded to the Tribunal.

(Deepak Gupta),J.

April 27, 2007 (Surinder Singh),J.
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