IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 61 of 1999
DATE OF DECISION: 25.7.2007

The Commissioner of Income-tax, Jalandhar

…Applicant

Versus

M/s National Mining Co., Nawanshahar

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Vivek Sethi, Advocate, for
Mr. Sanjiv Bansal, Advocate,
for the applicant-revenue.

Mr. Sanjay Bansal, Senior Advocate, with
Mr. Parvesh Saini, Advocate,
for the respondent-assessee.

JDGMENT

M.M. KUMAR, J.

The Income-tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal') in exercise of jurisdiction under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act') has referred the following questions of law for determination of this Court, which are claimed to have emerged from the order dated 20.7.1998, passed in I.T.A. No. 432 (ASR)/1992, in respect of assessment year 1987-88:-

"1. Whether, on the facts and in the circumstances of the case, the ld. ITAT is justified in law in dismissing the appeal of the revenue whereby upholding the action of the CIT (A) in deleting the penalty imposed under section 271(1)(c) of the Income-tax Act, 1961, holding that there was neither any concealment nor default for furnishing inaccurate particulars of income?

2. Whether, on the facts and in the circumstances of the case, the ITAT is justified in law in confirming the deletion by the CIT(A) of the penalty imposed under section 271(1)(c) of the Income-tax Act, 1961 holding that the A.O. had not correctly interpreted the case reported at (1985) 154-ITR-148 (S.C.)?"

The assessee is a partnership firm consisting of six partners including Shri Brij Mohan Singh etc. The assessee derives its income from job work of various contracts. On 31.7.1987, the assessee filed its return declaring total income of Rs. 2,94,720/- for the assessment year 1987-88. The income was assessed by the Assessing Officer at Rs. 7,81,110/- under Section 143(3) of the Act, which included addition of Rs. 4,70,135/- made by the Assessing Officer. The Assessing Officer treated the additional income of the assessee as concealed income alleging that the assessee had furnished inaccurate particulars. As such, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act during the course of assessment. A penalty notice was served upon the assessee

on 27.3.1989, which resulted into passing an order dated 20.3.1991, imposing a penalty of Rs. 2,35,047/- upon the assessee. The assessee challenged the order of the Assessing Officer in appeal before the CIT (A), Jalandhar, who vide her order dated 13.2.1992, deleted levy of said penalty.

The revenue challenged the order of the CIT (A), Jalandhar, by filing an appeal before the Tribunal. The Tribunal dismissed the appeal vide order dated 20.7.1998, with the observation in concluding para 6, which read as under:-

> " 6. In the case in hand the receipt of Rs. 4,70,135/- is the bone contention and that receipt was shown by the assessee during 1986-87 on accrual basis after effecting the change in the method of accountancy. The ld. D.R. was not able to point out any provision in which permission of the A.O. was required in the year under consideration to effect the change of accounting system. The important fact was whether the assessee had shown the receipt or not. The assessee had shown it in the assessment year 1986-87 and the Department has accepted that receipt on accrual as assessment was completed under section 143(3) of the Act. If there was anything abnormal in that year, the A.O. should have not included that receipt in the assessment f assessment year 1986-87. However, the assessee in the year under consideration offered beforethe A.O. for inclusion of this

> receipt of Rs. 4,70,135/- in the year under consideration with consequential adjustment of that amount in the assessment of assessment year 1986-87 and without any penalty. This offer was quite genuine and bonafide. There is no occasion for any concealment or furnishing of inaccurate particulars. Further, the ratio of the Hon'ble Supreme Court in the case of Mcdowell & Co. (Supra) [Mcdowell & Co. Ltd. v. C.T.O., 154 I.T.R. 148] has not been correctly interpreted by the A.O. as every citizen is allowed to adjust his tax planning so as to reduce its burden of tax. In the case in hand the A.O. or the ld. DR. has failed to point out as to what was wrong in planning the affair in the way the assessee did in both the assessment years and what loss the Revenue has suffered. Accordingly, no question of concealment of any income nor any default for furnishing inaccurate particulars of income is there. The result is that the appeal is without any force and the same is dismissed."

A perusal of the aforementioned finding recorded by the Tribunal shows that the receipt of Rs. 4,70,135/- was reflected by the assessee in the assessment for the assessment year 1986-87 on accrual basis after effecting the change in the method of accounting and no permission for the change of accounting system was required to be obtained from the Assessing Officer. The department has also accepted the receipt as the assessment was completed under Section

143(3) of the Act. Moreover, offer made by the assessee for adjustment of the amount in the assessment year under consideration, was not accepted by the Assessing Officer, which has been considered by the Tribunal to be genuine and bonafide and, therefore, there was no question of concealment or furnishing of inaccurate particulars within the meaning of Section 271(1)(c) of the Act. In the teeth of these categorical findings of fact, it is not possible to conclude that Section 271(1)(c) of the Act would be attracted to the facts of the present case. Therefore, it cannot be opined that the Tribunal was not justified in law in dismissing the appeal of the revenue.

Accordingly, both the questions are answered against the revenue and in favour of the assessee.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 25, 2007
Pkapoor