

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

ITA-295-2014

Decided on : 10.02.2015

**Commissioner of Income Tax
(Central), Gurgaon**

..... Appellant

VERSUS

Shri Jai Chand Bansal

..... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B. S. WALIA**

Present: Mr.Rajesh Sethi, Advocate, for the appellant.

RAJIVE BHALLA, J. (ORAL)

The revenue is before us challenging order dated 26.02.2014, passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') Chandigarh Bench 'A', Chandigarh, by asserting that the Tribunal has erred in affirming the order passed by the Commissioner of Income Tax (Appeals) (hereinafter referred to as the 'CIT(A)', Gurgaon, reducing the penalty from 20% to 5%, by raising the following substantial question of law: -

“(i) Whether in law and in the circumstances of the case, the Hon'ble ITAT has erred by confirming the order of the CIT(A), restricting the quantum of penalty u/s 221(1) to 5% of the unpaid self assessment tax instead of @ 20% levied by the assessing officer in spite of the provisions of section 249(4) by which appeal against penalty was not maintainable?”

Counsel for the revenue submits that as the assessee did not appear before the assessing officer, failed to deposit the tax within time and the explanation proffered by the assessee is prima-facie false, the CIT(A) is not justified in reducing the penalty from 20% to 5%. It is further submitted that as penalty to the extent of 100% can be imposed and the assessing officer had already taken a lenient view of the matter while imposing penalty of 20%, the reduction of penalty to 5% is not justified.

We have heard counsel for the revenue and perused the orders passed by the Tribunal as well as the CIT(A).

A perusal of the aforesaid orders reveals that discretion exercised by the CIT(A) to reduce penalty to 5% does not suffer from any error of jurisdiction much less is it perverse or arbitrary. A relevant extract from the order passed by the CIT(A), reads as follows: -

“.... No doubt there was a delay and in terms of section 140A (3) and the assessee is deemed to be assessee in default. It is also seen that prior to the levy of penalty, opportunity was afforded followed by issue of show-cause. No submission nor any appearance was stated filed/made. However one cannot omit the fact that the taxes emanating from the search by the group had been paid and Settlement Commission was also approached. The self assessment tax of Rs.97.81 lacs alongwith the interest was also paid in part by 31-12-2011. Evidence of the payment by the assessee and the group was also furnished. Be that as it may, the levy of penalty was due to non-payment of self-assessment tax and assessee did not respond to the show cause notice issued by the A.O. in this regard. Hence considering the facts and circumstances of the case I think it will be in the fitness of things to direct the A.O. to levy penalty @ 5% instead of 20% which is considered a bit harsh.”

The CIT(A) has after considering all relevant facts proceeded to exercise bonafide discretion to reduce penalty. The decision so recorded is neither perverse nor arbitrary. The affirmation of this aforesaid order by the Tribunal cannot be said to be perverse or arbitrary much less does it give rise to any substantial question of law.

As a consequence, we answer the question of law against the revenue and dismiss the appeal.

[RAJIVE BHALLA]
JUDGE

10.02.2015
Shamsher S.Sabharwal

[B. S. WALIA]
JUDGE