IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 425 of 2014 (O & M)
Date of Decision:- 14.07.2015

Commissioner of Income Tax (Central), Ludhiana ......Appellant(s)

vs.

M/s. Cosmos Builders and Promoters Ltd. ......Respondent(s)

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Rajesh Katoch, Advocate, for the appellant.

Mr. Pankaj Jain, Sr. Advocate, with Mr. Divya Suri, Advocate, and Mr. Sachin Bhardwaj, Advocate, for the respondent.

S.J. VAZIFDAR, A.C.J. (Oral)

C.M. No. 27376-CII of 2014

We are inclined to condone the delay as ITA No. 30 of 2014 has first been filed which, by order dated 06.10.2014, was allowed to be withdrawn with liberty to file a fresh appeal.

ITA No. 425 of 2014 (O & M)

This is an appeal against the order of the Tribunal dismissing the appellant's appeal against the order of the Commissioner of Income Tax. The present appeal is in respect of assessment year 2008-09.

The appellant contends that the following substantial questions of law arise for consideration:-

"(i) Whether, on the facts and in the

circumstances of the case, the Hon'ble ITAT is justified in law in confirming the order of CIT(A)-I, that no interest could be charged in the event of department not responding to the assessee's request for adjustment of cash seized against advance tax liability without appreciating the fact that the advance tax does not constitute the existing liability as per specific provision of section 132B of the Income Tax Act, 1961.

(ii) Whether, on the facts and in the circumstances of the case, the Hon'ble ITAT is justified in law in confirming the order of CIT(A)-I, whereas Explanation 2 to Section 132B of the Income Tax Act, 1961 inserted by the Finance Act, 2013, with effect from 01-06-2013 has clarified that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.

(iii) Whether the Explanation 2 to Section 132B of the Income Tax Act, 1861, though inserted by the Finance Act, 2013, with effect from 01-06-2013 being clarificatory in nature, makes explicit what was implicit in the provision before the insertion of the said Explanation.

(iv) Whether, on the facts and circumstances of the case, Hon'ble ITAT is justified in law in confirming the order of CIT(A)-I, whereas the due dates for paying installments of advance tax for the assessment year 2008-09, were 15-06-2007, 15-09-2007, 12-12-2007 and 15-03-2008 and for the shortfall in the installments of advance tax, which were falling due before the first request letter of the assessee dated 20-02-2008, the interest u/s 234C of the Income Tax Act, 1961 was chargeable in view of the provisions of Section 234C(1) (a) of the Income Tax Act, 1961, according to the ratio of the judgment of This Hon'ble Court in the case of CIT vs. Arun Kapoor, (2011) 234 ITR 351 (P & H)."

Question Nos. 1, 2 and 3 must be decided against the appellant in view of the judgment of a Division Bench of this Court dated 29.09.2014 in the case of ***Commissioner of Income Tax (Central), Ludhiana vs. Sh. Sandeep Jain and others*** in ITA No. 261 of 2014. The respondent was entitled to have the cash seized adjusted against its advance tax dues. The only question is whether the explanation to Section 132B of the Income Tax, 1961 (in short 'the Act') was retrospective in operation or not. This question has been answered in favour of the respondent by this judgment. The Division Bench expressly held that the explanation is not retrospective in operation.

The appeals as far as questions no. 1 to 3 are concerned, is dismissed.

As far as question no. 4 is concerned, the respondent would be liable to pay interest under Section 234C upto the date of the letter dated 20.02.2008 addressed by it to the department requesting the adjustment of the amount seized against its liability. This issue is decided in favour of the appellant by the judgment of another Division Bench of this Court dated 22.07.2010 in the case of ***Commissioner of Income Tax vs. Arun Kapoor, (2011) 334 ITR 351***. The liability under Section 234C shall be computed in accordance with this judgment.

The appeal is accordingly disposed off.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

14.07.2015
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