

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 23 of 2015 (O&M)

Date of Decision: 29.9.2015

Smt. Bhupinder Kaur

....Appellant.

Versus

Assistant Commissioner of Income Tax, Hoshiarpur

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Sanjeev Manhas, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of 4 days in refiling the appeal is condoned.
2. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 25.8.2014 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 02(Asr)/2014, for the assessment year 2007-08, claiming the following substantial questions of law:-

- (i) Whether on the facts and in the circumstances of the case, the case of the appellant-assessee fall under the preview of explanation 3 of

Section 271(1)(c) of the Income Tax Act, 1961?

- (ii) Whether on the facts and in the circumstances of the case, the appellant-assessee was under bonafide belief that consideration received on the sale of agriculture land as per agreement to sell was not taxable?
- (iii) Whether on the facts and in the circumstances of the case, the Ld. Tribunal order is sustainable on the true and correct interpretation of the provision of Section 271(1)(c) of the Income Tax Act, 1961, while setting aside or reversing the order passed by CIT(A), Jalandhar dated 29.10.2013 vide which CIT(A) had deleted the penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961?
- (iv) Whether on the facts and in the circumstances of the case, during assessment proceeding agreement to sell is to be considered or sale deed?
- (v) Whether the appellant-assessee has not deposited the entire tax before notice u/s 148 IT Act, 1961?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is one of the sleeping partners in M/s Bedi Automobiles, Piplawala, Hoshiarpur since 4.7.2007. She is owner in possession of land measuring 13 kanal 12 marlas which was sold to one Surjit Singh representative of Jai Dev

vide agreement to sell dated 8.8.2006 for a sale consideration of ₹ 37 lacs. The assessee introduced the said amount in capital addition to her capital account in the firm. Jai Dev got the sale deed registered on 8.8.2007 for ₹ 11,90,000/- to avoid stamp duty. The assessee under the impression that ₹ 37,00,000/- was capital gains and exempt from tax introduced the said amount in her capital account without payment of any capital gain tax thereon. During the course of assessment proceedings of M/s Bedi Automobiles, Hoshiarpur for the assessment year 2007-08, it was found that the present assessee being a partner of the said firm had introduced capital addition of ₹ 37 lacs in her capital account as sale price of the agriculture land. She produced the copy of the agreement to sell dated 8.8.2006 to the effect that she sold her agriculture land to one Jai Devi for a consideration of ₹ 37 lacs and also disclosed that she had deposited the said amount in the firm where she is a partner as capital gain. However, the Assessing Officer referred to the sale deed dated 8.8.2007 showing that the assessee had sold her agriculture land for a sum of ₹ 11.90 lacs. Even before the assessment, on 3.2.2007, the assessee deposited ₹ 2,25,000/- under self assessment as a part of the tax and agreed to deposit the entire tax later on as at that time her financial position was not good. On 18.2.2010, the Assessing Officer served a notice to the assessee under Section 148 of the Act for the undisclosed income of ₹ 27,00,900/- (i.e., ₹ 26,85,900/- + ₹ 15,000/-). On the same day, the assessee surrendered the said income and filed a return by declaring the income of ₹ 27,00,900/-. The Assessing Officer vide order dated 14.9.2010 (Annexure A-1) framed the assessment under Section 143(3) of the Act at ₹ 27,00,900/- and also initiated penalty proceedings under Section 271(1)(c) of the Act for

concealment of the income. The Assessing Officer vide order dated 10.3.2011 (Annexure A-2) levied penalty of ₹ 8,44,050/- under Section 271(1)(c) of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT (A)"]. The CIT(A) vide order dated 29.10.2013 (Annexure A-3) allowed the appeal and deleted the penalty levied by the Assessing Officer. Being dissatisfied, the revenue filed an appeal before the Tribunal who vide order dated 25.8.2014 (Annexure A-4) allowed the appeal and set aside the order of the CIT(A). Hence, the present appeal by the assessee.

4. We have heard learned counsel for the assessee and perused the record.

5. The primary question that arises in this appeal is whether the Tribunal was justified in upholding the order of the assessing authority imposing penalty of ₹ 8,44,050/- under Section 271(1)(c) of the Act?

6. The Tribunal while allowing the appeal of the revenue had held that the assessee was liable to penalty under Section 271(1)(c) of the Act as she had furnished inaccurate particulars of income. Further, it was held that the return filed by the assessee was a non est return. Even no explanation was furnished by the assessee to substantiate the claim of not filing the return voluntarily. The Tribunal observed that the case of the assessee fell under main provisions of Section 271(1)(c) of the Act as there was definite concealment in the facts and circumstances and, therefore, reference to Explanation 3 to Section 271(1)(c) of the Act for deleting the penalty under Section 271(1)(c) of the Act by the CIT was unjustified. The Tribunal had restored the penalty amounting to

₹ 8,44,050/- levied by the Assessing Officer which was deleted by the CIT(A) in appeal. The findings recorded by the Tribunal read as under:-

“7. We have heard the rival contentions and perused the facts of the case. In the present case, the main issue is whether the returned filing by the assessee is a return u/s 139(4) or in response to notice u/s 148 of the Act and second issue related to the first issue with respect to the levy of penalty u/s 271(1)(c) of the Act, is whether return filed is voluntary return or not. In this regard, there is no dispute to the fact that the assessment in the case of M/s. Bedi Automobiles in which the assessee is a partner was made much before the issuance of notice u/s 148 to the assessee. Therefore, it cannot be said that the assessee partner Smt. Bhupinder Kaur was not aware of such fact, as noticed in the reasons recorded by the A.O. The assessee proceeded to deposit tax on 03.02.2010 amounting to Rs.2.25 lacs which is a part payment against tax payable after payment of advance tax of Rs.12,89,333/-, as claimed by the assessee in the submission dated 04.03.2011. The return u/s 139(4) should have been filed up to 31.03.2009 for the assessment year 2007-08, which in fact, has been filed on 18.02.2010. Therefore, the return of income filed by the assessee is a non est return and, therefore, the claim of the assessee in para 4 to Explanation/Reply dated 04.03.2011

reproduced hereinabove is against the facts of the case and is not a return u/s 139(4) of the Act. On this count, the return filed by the assessee is a non est return.

7.1. The assessee in the same explanation had claimed the return to have been filed in response to notice u/s 148 of the Act. The fact that notice in the present case has been issued on 15.02.2010 and served on the assessee on 18.02.2010 and the assessee filed the return on 18.02.2010. If the return is treated to have been filed after service of notice u/s 148 of the Act, then the fact that the return has been filed when the income tax department detected the concealment of income. No cogent explanation has been submitted by the assessee to substantiate the claim of not filing the return voluntarily. The assessee was short of finances and, therefore, did not deposit the tax with the Income Tax Department, cannot be a sufficient explanation. The issuance of notice u/s 148 and in the facts and circumstances of the present case, as mentioned hereinabove, the assessee was aware of the fact in the assessment of the firm M/s. Bedi Automobiles by virtue of issuance of notice u/s 148 and in the facts and circumstances shall be deemed to have concealed the particulars of income or has furnished inaccurate particulars thereof and the assessee is liable to penalty u/s 271(1)(c) of the Act.

7.2. The Ld. CIT(A) has observed that it cannot be said with certainty that as to whether the return filed by the assessee is a voluntarily return or it has been filed in response to notice u/s 148 of the Act and the benefit of doubt should go in favour of the assessee in all probability. The Ld. CIT(A) cannot blow hot and cold in the same breath. The finding of the Id. CIT(A) cannot hold good for the reasons that the return filed by the assessee is a non est return, as has been held hereinabove by us. The return cannot be said to be voluntary return as per our findings hereinabove. The assessee falls under the main section 271(1)(c) of the Act and reference to Explanation 3 to section 271(1)(c) by the Id. CIT(A) for cancelling the penalty is not a correct approach. Further, the decision relied upon by the Id. Counsel for the assessee in the case of CIT vs. Rajiv Garg & Ors (supra) does not help the assessee. Therefore, the penalty so cancelled by the Id. CIT(A) is against the facts and circumstances of the case and accordingly, the order of the Id. CIT(A) is reversed and that of the A.O. is restored. Thus, all the grounds of the Revenue are allowed.”

7. The Tribunal had rightly concluded that there was clear concealment of income under the main provisions of Section 271(1)(c) of the Act and reference to Explanation 3 to Section 271(1)(c) of the Act by the CIT(A) was unwarranted. Learned counsel for the assessee was unable to demonstrate that either the approach of the Tribunal was

erroneous or perverse in any manner or that the findings of concealment recorded by the Tribunal are based on misreading or misappreciation of evidence or material on record which may warrant interference by this Court. Thus, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 29, 2015
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(RAMENDRA JAIN)
JUDGE