IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 281 of 2009 (O&M)

Date of Decision: 02.05.2016

Commissioner of Income Tax-II, Amritsar ....Appellant

Versus

Smt. Alka Khurana

......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Denesh Goyal, Sr. Standing counsel for the appellant.

Mr. Alok Mittal, Advocate for the respondent.

RAJESH BINDAL,J.

This appeal has been filed under Section 260 A of the Income Tax Act, 1961 (for short 'the Act'), against the order dated 31.10.2008 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in ITA No. 230/ASR/2008, for the assessment year 1998-99, raising the following substantial question of law:

> (i) Whether the Ld. ITAT has grossly erred in law in setting aside the penalty order after giving findings that the penalty proceeding were duly initiated and the assessee declared the concealed income in revised return only after detection of the Scam by the Department/Revenue?
>
> (ii) Whether the Ld. ITAT has committed an ex-facie perversity in law by ignoring the evidence on record, which included the various statements and documents demonstrating that the assessee had indulged in obtaining 'Accommodation Entries' by opting to become a partner in M/s A.G. Exports?
>
> (iii) Whether in the facts and in the circumstances of

the case, the impugned order is contrary to law, perverse and illegal in as much as, ignoring that the 'Bogus Export Entry Scam' unearthed by the Investigation Wing of the Income Tax Department that the assessee is infact not a partner in M/s A.G. Exports and he has simply arranged an accommodation entry and the overwhelming evidence produced thereof?

(iv) Whether the impugned order is wholly erroneous in setting aside the Penalty Order only for the reason that one statement used against the assessee could not be cross examined by the assessee, ignoring the other well established overwhelming evidence?

(v) Whether in the facts and circumstances of the case, the Ld. ITAT has erred in setting aside the penalty order when Sh. Vivek Kapoor has already in his case before the Income Tax Settlement Commission stated that he provided accommodation entries to the parties and paid taxes on the income disclosed?

Learned counsel for the appellant-revenue submitted that in view of circular No.21/2015 dated 10.12.2015 read with circular No.279/Misc/M-142/2007-ITJ (Part) dated 8.3.2016, issued by Central Board of Direct Taxes, he does not wish to press the present appeal, as the tax effect involved is less than ₹ 20 lacs. However, he prays that liberty be granted to the revenue to file an application for revival of the appeal in case something survives therein.

Dismissed as not pressed with liberty as prayed for. It is however, clarified that withdrawal of the appeal by the revenue shall not be taken as affirmation of order of the Tribunal on merits. The legal issue as claimed by the revenue is left open to be adjudicated in an appropriate case.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

02.05.2016
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