

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

I.T.T.A.No.457 of 2017

JUDGMENT: (per SK,J)

This appeal by the revenue under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act of 1961'), seeks to raise the following substantial questions of law:

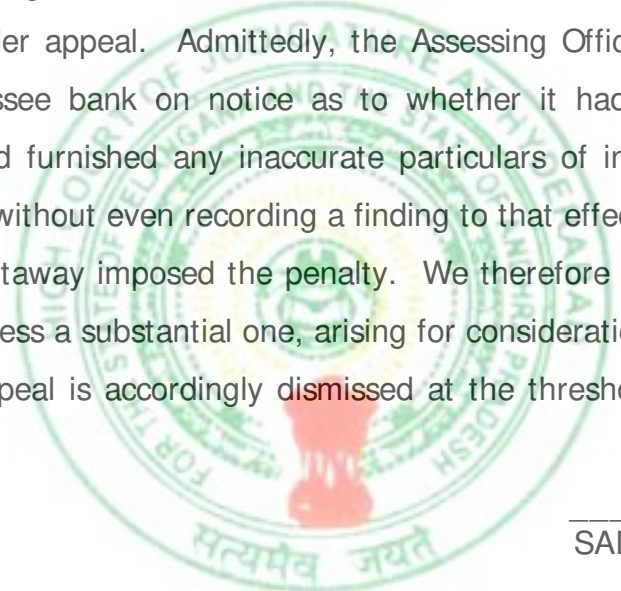
- (i) 'In the facts and circumstances of the case, whether the Tribunal (ITAT) is correct in law in upholding the cancellation of penalty levied under Section 271(1)(c) of the Act of 1961, with an observation that it was only a technical error in the subject claim made by the respondent-assessee and the respondent-assessee has agreed for the said disallowance as soon as it realised its mistake in the claim, without due appreciation of material facts and reasons mentioned in the penalty orders of the Assessing Officer?
- (ii) In the facts and circumstances of the case, whether the Tribunal (ITAT) is correct in law in deleting the penalty under Section 271(1)(c) of the Act of 1961, on the ground that it was only a technical error by ignoring the binding decision of the Supreme Court of India in the case of Union of India v. Dharmendra Textile Processors [306 ITR 277] and Gujarat Industries Limited v. CTO [(SC) 293 ITR 584], wherein it was held that *mens rea* is not essential for civil liability of penalty under fiscal statutes are for breach of civil liabilities?

The appeal arises in the context of the assessment year 2009-10. The respondent/assessee bank filed its return of income for the said year claiming a deduction under Section 36(1)(viiia) of the Act of 1961. However, when the case was taken up for scrutiny under CASS, it was noticed that the assessee bank had claimed deduction at the rate of 10% towards bad and doubtful debts in relation to certain rural branches but the population of the areas where those rural branches were situated was more than the prescribed norm of ten thousand. As the statutory provision did not entitle the assessee bank to claim such allowance once the population norm was not met, the Assessing Officer called upon the assessee bank to explain as to why the deduction claimed should not be disallowed. The assessee bank thereupon agreed to such disallowance and the assessment was completed. While concluding the assessment, the Assessing Officer initiated proceedings under Section 271(1)(c) of the Act of 1961 and levied penalty under a separate order dated 22.09.2015.

In appeal before the Commissioner of Income Tax (Appeals), Kurnool, by the assessee bank, the Commissioner found that the Assessing Officer had not found that there was any concealment of particulars of income by the assessee bank or that any inaccurate particulars of income had been furnished by it. As this is the basic requirement under the statutory provision to impose penalty, the Commissioner set aside the order under appeal. Aggrieved thereby, the revenue approached the Income Tax Appellate Tribunal, Hyderabad Bench 'B', by way of I.T.A.No.1050/2016. By order dated 10.02.2017, the Tribunal confirmed the order of the Commissioner recording that the assessee bank had agreed to the disallowance as soon as it realised the mistake committed by it.

This being the factual situation, we find no reason to interfere with the order under appeal. Admittedly, the Assessing Officer did not even put the assessee bank on notice as to whether it had concealed any income or had furnished any inaccurate particulars of income. Without doing so and without even recording a finding to that effect, the Assessing Officer straightaway imposed the penalty. We therefore find no question of law, much less a substantial one, arising for consideration.

The appeal is accordingly dismissed at the threshold. No order as to costs.


SANJAY KUMAR,J

Dr. SHAMEEM AKTHER,J

Date:25.07.2017

GJ