IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 15063 of 2003
Date of Decision : 12.07.2018

Vijay Kumar Panna Lal and others

Petitioners

Versus

Central Board of Direct Taxes and others

Respondents

* * *

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sachin Bhardwaj, Advocate
for the petitioners.

Mr. Yogesh Putney, Advocate
for the respondents.

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AVNEESH JHINGAN, J.

1. The present writ petition has been filed with a prayer for quashing order dated 02.07.2003 (Annexure P-1) passed by the Central Board of Direct Taxes rejecting the belated claim for refund of ₹ 32,000/-. The assessment year involved in the present case is 1995-96.

2. Petitioner was an agriculturist having income from a rented godown. During the relevant assessment year, the rental income of the petitioner was ₹1,28,000/-. In compliance with the provisions of Section 194I of the Income Tax Act, 1961 (for short 'the Act'), T.D.S. was deducted by the tenant. Petitioner filed a claim for refund of ₹32,000/- deducted as TDS. Alongwith the application, return was also filed for Assessment Year

1995-96 on 31.08.1998. In the return filed, the petitioner claimed a loss of ₹4,96,535/-. The loss was claimed due to interest paid amounting to ₹6,24,535/- on the loan from Bank of India. Condonation of delay in filing the claim was sought. The Chief Commissioner of Income Tax issued a notice dated 02.09.2002 granting personal hearing on 23.09.2002. After hearing the learned counsel and considering the facts, rejected the application.

3. Aggrieved of the order, present petition has been filed.

4. Learned counsel for the petitioners contended that the respondent No.2 erred in dismissing the claim for refund and not condoning the delay. He submitted that the reasons for delay were duly explained as the T.D.S. Certificate issued by M/s United Rice Land Limited (tenant) was misplaced. Moreover, the petitioner had loss, therefore, no return was filed for assessment year 1995-96. Reliance was placed on circulars dated 30.03.1990 and 26.6.1993. He contended that application of the petitioner was rejected inspite of the fact that the petitioner fulfilled the conditions mentioned in the circular dated 26.6.1993 and the Board had power to condone the delay.

5. Learned counsel for the respondents defended the order. He argued that the petitioner was having rental income but had not filed any return for the relevant assessment year as per the provisions of the Act. He resisted the refund on the ground that in the return filed, petitioner claimed loss of ₹ 4,96,535/- but the petitioner was neither maintaining books of account nor had given full details about the loans availed by him.

6. We have heard learned counsel for the parties and perused the paper book.

7. The contentions raised by learned counsel for the petitioners are not well founded. It would be pertinent to take note of facts that the income tax return for assessment year 1995-96 could have been filed under Sub Section (1) of Section 139 of the Act by due date or under Sub Section (4) of Section 139 of the Act at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Accordingly, the return could be filed upto 31.03.1996. There was a rental income of ₹ 1,28,000/- yet no return was filed during the prescribed period.

8. It is important to note that the claim of refund of ₹32,000/- was made as no tax was payable on account of loss claimed amounting to ₹4,96,535/- in the return. On query to substantiate the claim of the loss, the petitioner submitted that he was not maintaining any books of account. It was claimed that loss was suffered as interest of ₹ 6,24,535/- was paid to the bank. No details of loans obtained from the bank were furnished. The entire endeavour of the petitioner was to avoid the scrutiny of returns and to claim refund without facing assessment proceedings. The issue of refund would have only arisen once the assessing officer was satisfied with regard to the loss claimed.

9. The reliance on the circulars is of no help to the petitioner. The opening paragraph of the circular dated 26.10.1993 states as under:-

> *These provide that CIT has power to condone delay in case of **genuine hardship of refund claims** up to Rs. 1,00,000/-. The power of condonation in cases of refund claims of more than Rs.1,00,000/- as well as power of rejection in all cases lie with the Board.*

In the present case, the amount involved was merely

₹32,000/-, no case is made out of genuine hardship. The non filing of return by petitioner in time lacks *bonafide.*

10. In the circumstances mentioned above, no case is made out in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

11. The writ petition is dismissed.

[AJAY KUMAR MITTAL]
JUDGE

[AVNEESH JHINGAN]
JUDGE

12.07.2018
pankaj baweja

Whether speaking/reasoned ? ***Yes*** */ No*

Whether reportable ? ***Yes*** */ No*