IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 109 ITA No. 34 of 2018 (O&M)

Date of decision : 14.05.2018

The Commissioner of Income Tax
(Exemptions),Chandigarh ..... Appellant

VERSUS

M/s Swami Vivekanand Educational
Society, HUDA, Jagadhri ..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Denesh Goyal, Advocate, for the appellant.

. . .

RAJESH BINDAL, J:

Revenue is in appeal against the order dated 21.11.2016, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (for short the 'Tribunal') in ITA No. 876/Chd/2014. The appeal pertains to the assessment year 2005-06 and seeks to raise the following substantial questions of law: -

"(i) Whether on the facts and circumstances and in law the Hon'ble ITAT was justified in deleting the penalty by accepting assessee's claim that plausible enough explanation had been given during the assessment proceedings whereas the appellant authorities upto the ITAT level had confirmed the addition made by the AO on account of capital gain u/s 11 (1A) of the Act, 1961?

(ii) Whether on the facts and circumstances and in law the Hon'ble ITAT was justified in deleting the penalty whereas the Ld. CIT(A) has given detailed findings regarding concealment/furnishing of inaccurate particulars of income?

(iii) Whether on the facts and circumstances and in law the Hon'ble ITAT was justified in deleting the penalty by applying the ratio of decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Ltd. whereas in the present case the claim of the assessee was held to be unsustainable up to the Hon'ble ITAT?"

The respondent-assessee which is a registered charitable trust had transferred two of its properties to its sister charitable trusts which are also duly registered under Section 12A of the Income Tax Act, 1961 (for short the 'Act'). Disclosure thereof was made in the returns filed. However, the departmental authorities treated such transfers to be transfer of assets resulting in levy of capital gain. The present appeal pertains to levy of penalty under Section 271(1)(c) of the Act, alleging concealment of income.

The Tribunal found that there was a full disclosure of facts regarding transfer of properties by the respondent-assessee in favour of two of its duly registered charitable sister trusts, hence, penalty under Section 271(1)(c) of the Act was not leviable. In the impugned order it has specifically been recorded by the Tribunal that the revenue has not been able to produce any material on record to show that the assets were transferred for any consideration either received or receivable by the assessee. With the aforesaid facts on record the Tribunal has taken a view that it was not a case of deliberate concealment of income by the assessee, hence, penalty under Section 271(1)(c) of the Act was not leviable. Reliance has been placed on a judgment of Hon'ble the Supreme Court in

Commissioner of Income Tax vs. Reliance Petroproducts Pvt. Ltd., 2010 (322) ITR 158 SC.

In view of the above factual matrix, we do not find that any question of law much less any substantial question of law arises in the present appeal.

The appeal is, accordingly, dismissed.

Consequently, the applications for condonation of delay in filing and refiling the appeal are also dismissed.

[RAJESH BINDAL]
JUDGE

14.05.2018
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[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No