IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.1132 of 2009

M/s.Amutham Enterprises
31-B Maniam Vellappar Street
K.K.Pudur, Saibaba Colony
Coimbatore-641 038. ... Appellant/Respondent

Vs.

The Commissioner of Income Tax
Coimbatore. ... Respondent/Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'A' dated 27.02.2009 in ITA No.306/Mds/2008. Against the order of Commissioner of Income Tax (Appeals-1) Coimbatore dated 05.12.2007 in Appeal No.51/07-08 and against the order of Income Tax Officer Ward - II (2) Coimbatore in AACFA3373N dated 28.02.2007.

For Appellant : Mr.R.Kumar for Mr.T.N.Seetharaman
For Respondent : Mr.T.R.Senthilkumar and Mrs.K.G.Usha Rani

JUDGMENT
(Delivered by DR.VINEET KOTHARI, J.)

The assessee has filed this appeal under Section 260A of the Income Tax Act, raising the following purported substantial questions of law arising from the order of the Income Tax Appellate Tribunal, Chennai Bench 'A' in ITA No.306/Mds/2008 dated 27.02.2009, whereby the learned Tribunal dismissed the appeal filed by the assessee and upheld the penalty imposed under Section 271(1)(c) of the Income Tax Act, on the assessee.

> "(a)Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in upholding levy of penalty under Section 271(1)(c) of

the Act, when the assessee offered for taxation genuine loans to avoid protracted litigation?

(b)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in reversing the order of the Commissioner of Income Tax (Appeals) cancelling the penalty after due consideration of the facts and judicial decisions?

(c)Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in upholding levy of penalty u/s.271(1)(c) when, apart from relying on the assessment order, the assessing officer had not brought on record any other material to independently establish that the loans received were the appellant firm's income?"

2.The relevant findings of the learned Tribunal are quoted below for ready reference:

"The facts have been discussed by the AO in detail at pages 3 to 6 of the assessment order dated 28.02.2007. The copies of account of the two creditors as appearing in the books of account of the assessee have been reproduced by the AO in the assessment order. These are as under:

Shri Rueben Robert Ponnia (LF No.18):

Date	Particulars		Dr. Amount	Cr. Amount
27 May	By State Bank of India Ch.No.215000-10000, 639349-100000	Rcpt		2,00,000
28 Jun	By State Bank of India Ch.No.218485	Rcpt		1,00,000
				3,00,000
	To Closing Balance		3,00,000	
			3,00,000	3,00,000
1 Apr	By Opening Balance			3,00,000

Shri Ananda Kumar Jagannathan (LF No.14):

Date	Particulars		Dr. Amount	Cr. Amount
5 Jul	By Indian Bank Ch.No.218486	Rcpt		1,00,000
23 Jul	By State Bank of India Ch.No.218494	Rcpt		2,00,000
				3,00,000
	To Closing Balance		3,00,000	
			3,00,000	3,00,000
1 Apr	By Opening Balance			3,00,000

8.The enquiries conducted by the AO revealed that the two amounts of Rs.3,00,000 each shown in the names of Shri Rueben Robert Ponnia and Shri Ananda Kumar Jagannathan came from the savings bank account of Shri R.Jaganathan, the Managing Partner of the assessee-firm.

8.1.The AO examined the bank pass book of Shri Rueben Robert Ponnia and found that the balance in this account never exceeded Rs.15,000. It was also found that Shri Rueben Robert Ponnia owned 5 acres of dry land and that he did not carry out any agricultural operation during the past three years. The enquiries conducted by the AO showed that Shri Rueben Robert Ponnia did not have the creditworthiness to lend a sum of Rs.3,00,000 to the assessee-firm.

9.It is seen that in the accounts of Shri Rueben Robert Ponnian and Shri R.Jaganathan appearing in the books of account of the assessee, the amounts aggregating to Rs.6,00,000 were shown to have been received by cheque. The names of the banks and the cheque numbers have also been mentioned.

10.In our opinion, this is a case of gross falsification of records. The facts revealed by the enquiries conducted by the AO were that the cheques were issued by one of the partners of the assessee-firm from his savings bank account. But the books of accounts were falsified to show that these amounts were received by cheque from the creditors themselves. Therefore, we are satisfied that this is a fit case for levy of penalty u/s 271(1)(c) of the Act. The decisions relied upon by the Id.AR are distinguishable on facts and do not apply to this case. The penalty is leviable in respect of the two amounts of Rs.3,00,000 each aggregating Rs.6,00,000. However, considering the facts and circumstances of the case, we direct the AO to restrict the quantum of penalty to minimum.

11.In the result, the appeal filed by the department is partly allowed."

3.The questions of law on which the appeal was admitted by a Co-ordinate Bench of this Court on 17.11.2009, are also quoted below for ready reference.

"(a)Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in upholding levy of penalty under Section 271(1)(c) of the Act, when the assessee offered for taxation genuine loans to avoid protracted litigation?

(b)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in reversing the order of the Commissioner of Income Tax (Appeals) cancelling the penalty after due consideration of the facts and judicial decisions?

4.Learned counsel for the appellant-assessee, relying upon the decision of the Madhya Pradesh High Court in the case of Commissioner of Income Tax vs. Suresh Chandra Mittal, in (2000) 241 ITR 124 (M.P.), submitted that merely because the assessee agreed to the addition of cash credits in the name of two persons, viz. Mr.Rueban Robert Ponnia and Mr.Ananda Kumar Jagannathan, son of a partner of the assessee firm, the learned Tribunal as well as the Assessing Authority were not justified in imposing penalty under Section 271(1)(c) on the assessee firm itself, since the money in question remitted by the son and daughter of the said senior partner Mr.Jaganathan was genuine and therefore penalty could not be imposed in the hands of the assessee firm. He further submitted that the assessing authority itself did not impose any such penalty in so far as the advance amount of Rs.1,50,000/- made by Ms.Priyadharshini, daughter of the Managing Partner, is concerned and therefore no such penalty could be imposed as far as the money of Mr.Anandha Kumar Jagannathan is concerned. He submitted that there was no conscious concealment on the part of the assessee and the explanation given by the assessee was bona fide and reasonable and therefore penalty in question deserves to be set aside.

5.On the other hand, the learned counsel for the Revenue submitted that the Assessing Authority had imposed the maximum penalty of 200% of the amount of tax of such unproved cash credits in the books of accounts of the assessee firm, whereas the learned Commissioner of Income Tax (Appeals) deleted the entire penalty, but in the appeal filed by the Revenue, the learned Tribunal has imposed and restored the said penalty to the minimum extent of 100% of the tax on such concealed income in the form of unproved cash credits. He submitted that the money belonging to the son and daughter of the senior partner was routed through the third party Mr.Rueban Robert Ponnia which could not be proved to be genuine cash credits and therefore, imposition of penalty to the minimum extent by 100% has to be upheld and no substantial question of law arises in the present appeal.

6.Having heard the learned counsel for the parties, we are satisfied that no substantial question of law arises in the present case. The matter of explanation furnished by the assessee firm, being accepted by the learned Tribunal or not, is a fact finding exercise and unless the findings of the Tribunal can be held to be perverse, in our opinion, no substantial question of law arises. We do not find any such perversity in the order passed by the learned Tribunal. The Tribunal has already reduced the penalty to the minimum level of 100% of tax on such concealed income. It cannot be said that merely because the assessee has agreed to a particular addition to be made in his declared income, the penalty under Section 271(1)(c) of the Act cannot be imposed nor there is any merit in the proposition that since the penalty was not imposed for the cash entry in the name of daughter for which also the assessee agreed for the said addition, no such penalty could be imposed for the credit in the name of the son Mr.Anandha Kumar Jagannathan and in the name of the third party Mr.Rueban Robert Ponnia. Therefore, we do not find any substantial question of law arising in the present appeal filed by the assessee.

7.The appeal of the assessee deserves to be dismissed and the same is accordingly, dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Income Tax Appellate Tribunal,
   Chennai Bench 'A'.

2. The Commissioner of Income Tax,
   (Appeals I), Coimbatore.

3. The Income Tax Officer,
   Ward II(2) Coimbatore.

+1cc to Mr.T.N.Seetharaman, Advocate, S.R.No.26226
+1cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.26776

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SJ(CO)
CS/22/04/2019