

ITA/63/2012

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

SMT. AMITA BHADRA

-Versus-

ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE-46, KOLKATA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th February, 2023

Appearance :
Mr. Soumen Bhattacharyya, Adv.
...for the respondent..

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 4th September, 2009 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.1175/Kol/2009 for the assessment year 2005-06.

The appeal was admitted on 20th June, 2012 on the following substantial question of law:

"Whether on the facts and in the circumstances of the case the order of the Tribunal was justified in upholding penalty imposed under Section 271(1)(c) of the Act without bringing on record any material to

bring the case within Explanation 1 to Section 271(1)(c) of the Act ?”

We have heard Mr. Soumen Bhattacharyya, learned standing counsel appearing for the respondent/revenue.

The short issue involved in this appeal is whether the Tribunal was justified in reversing the order passed by the Commissioner of Income Tax (Appeals) deleting the penalty imposed on the assessee. The Commissioner in its order took note of the factual position which was not disputed by the revenue regarding the condition and status of the assessee. Furthermore, the CIT(A) noted that the assessee's health condition was precarious, she was a senior citizen, she was unmarried and was residing along with her brother. Taking note of the relevant factors, the CIT(A) came to the conclusion that the imposition of penalty was not justified and accordingly, allowed the appeal.

The learned Tribunal by the impugned order has reversed such a decision rendered by the CIT(A) largely relying upon certain case laws without examining the correctness of the finding of the CIT(A) which was rendered taking note of the facts and circumstances of the case. In this appeal also all the relevant documents which were filed before the Tribunal to establish that the assessee was seriously unwell, have been filed and, there is nothing on record to doubt the genuineness

of those documents. Furthermore, so far as the quantum of assessment is concerned, the assessee has not questioned the same and she had challenged the penalty proceedings alone. The fact that the assessee was prevented by reasonable cause for not disclosing the investment made in the mutual fund, the penalty was deleted by the CIT(A). The learned Tribunal has not disputed the factual finding recorded by the CIT(A) for allowing the assessee's appeal.

Thus, in the absence of any finding by the Tribunal holding that the approach of the CIT(A) was erroneous, it is not a case where the learned Tribunal could have set aside the order of the CIT(A) and affirm the penalty order passed by the Assessing Officer.

For the above reason, the appeal filed by the assessee (ITA/63/2012) is allowed and the order passed by the Tribunal is set aside and the order passed by the CIT(A) stands restored and the penalty stands deleted and the substantial question of law is answered in favour of the assessee.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)