HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-12-2003 (O&M)
Date of decision: 10.04.2023

M/s. Industrial Cables (India) Ltd. ....Appellant

V/s.

Commissioner of Income Tax, Patiala and another ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Divya Suri, Advocate with
Ms. Sameeksha Gupta, Advocate
for the appellant.

Mr. Rishabh Kapoor, Advocate
for the respondents.

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Ritu Bahri, J.

This order shall dispose of two income tax appeals i.e. ITA No. 12 of 2003 and ITA No. 13 of 2003 as the issue involved in both the appeals is identical. For the sake of brevity, facts are being extracted from ITA-12-2003.

The appellant M/s. Industrial Cables (India) Ltd. has come up in appeal against the order dated 23.09.2002 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (hereinafter referred to as 'the Tribunal') (Annexure P-6) whereby two cross appeals i.e. one filed by the revenue was partly allowed and another by the assessee was dismissed against the order dated 05.08.1996 CIT (A), Patiala for the assessment year 1988-89.

The Tribunal had considered the issue whether the Assessing

Officer was justified in levying the penalty under Section 273(2)(aa). In para No. 8 of the order dated 23.09.2002 (Annexure P-6), it has been observed that the Assessing Officer had issued notice under Section 273(2)(aa) on 16.10.1995 which was duly served upon the assessee on 29.10.1995. The assessee filed reply vide letter dated 31.10.1995 with reference to default mentioned under Section 273(2)(aa) and the same was duly taken into account while imposing the penalty. The Tribunal observed that Section mentioned in the assessment order of the first notice issued under Section 273(2)(a) does not vitiate the penalty proceedings and invalidate the penalty order as the Assessing Officer had made the assessee fully aware of the actual charge by subsequnt notice issued under Section 273(2)(aa). Moreover, the assessee had also furnished the reply with reference to default under Section 273(2)(aa) and not with reference to default under Section 273(2)(a). The Tribunal further observed that the penalty was imposed after allowing proper opportunity to the assessee with respect to specific default under Section 273(2)(aa). The Tribunal held that the mistake in mentioning wrong section in the assessment order and the first notice was only of a clerical nature which was subsequently rectified. It was further observed that Mr. Arun Kaushal, Senior Manager, Taxation had given an affidavit and tendered unconditional apology before the Court and his apology was accepted. The Tribunal held that the penalty had been imposed by the Assessing Officer after due application of mind and on the technical ground and that the initial notice given under Section 273(2)(a) cannot be made a ground for quashing the penalty levied under Section 273(2)(aa).

The CIT(A) had rightly set aside the order of CIT(A) and directed the Assessing Officer to recompute the penalty @ 10% of the difference in tax by taking the assessed income as Rs.2,82,16,541/-.

Hence, no substantial question of law arises for consideration in the present appeal and the same is dismissed.

Pending application stands disposed of.

(RITU BAHRI)
JUDGE

10.04.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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