Commissioner Of Income Tax vs Sandeep Jain C/O Ludhiana Steel Rolling

Punjab-Haryana High Court Commissioner Of Income Tax vs Sandeep Jain C/O Ludhiana Steel Rolling ... on 29 September, 2014 Bench: Rajive Bhalla, Amit Rawal Income Tax Appeal No.261 of 2014(O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income Tax Appeal No.261 of 2014(O&M) Date of Order: 29.09.2014

Commissioner of Income Tax(Central), Ludhiana ..Appellant

Versus

Sh. Sandeep Jain C/o Ludhiana Steel Rolling Mills, Ludhiana. ..Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Katoch, Advocate, for the appellant.

RAJIVE BHALLA, J (Oral)

C.M.No.16670-CII of 2014 Prayer in this application is to condone delay of 24 days in re-filing the appeal. We have heard counsel for the appellant and as sufficient cause has been shown, allow the application and condone the delay of 24 days in re-filing the appeal. C.M.No.16671-CII of 2014 Allowed as prayed for. Income Tax Appeal No.261 of 2014 The revenue is before us challenging rectification order dated 08.10.2012(Annexure-AII), passed by the Assessing Officer, order dated 12.03.2013 (Annexure A-IV) passed by the Commissioner of Income Tax (Appeals-I), Ludhiana, as well as order dated 20.09.2013 (Annexure A-V), passed by the Income Tax Appellate Tribunal Chandigarh Bench 'B', Chandigarh on the NARESH KUMAR 2014.10.14 16:41 I attest to the accuracy and authenticity of this document Chandigarh Income Tax Appeal No.261 of 2014(O&M) -2- following substantial questions of law:-

"1. Whether, on the facts and in the circumstances of the case, Hon'ble ITAT is justified in law in observing that the amount seized under Section 132 can be appropriated towards the advance tax liability without appreciating the fact that the advance tax does not constitute the existing liability as per specific provision of Section 132B.

2. Whether, on the facts and in the circumstances of the case, Hon'ble ITAT is justified in not appreciating the fact that the amount seized under Section 132B can only be adjusted against the existing liability and not against advance tax liability.

3. Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is legally correct in upholding the order of Commissioner of Income Tax (Appeals) wherein it has been held that AO was not justified in charging the consequential interest under Section 234B."

Counsel for the revenue submits that the only question that the revenue presses is chargeability of interest under Section 234B and 234C of the Income Tax Act, 1961, i.e., question no.3. Counsel for the revenue submits that though the Tribunal has answered this question against the revenue by placing reliance upon a judgment of this Court in Income Tax Appeal No.36 of 2004 (Commissioner of Income Tax v. Ashok Kumar, (2011) 334 ITR NARESH KUMAR 2014.10.14 16:41 I attest to the accuracy and authenticity of this document Chandigarh Income Tax Appeal No.261 of 2014(O&M) -3- 355 (P&H), it has ignored explanation (2) to Section 132B of the Act, which makes the assessee liable for interest. We have heard counsel for the appellant, perused the impugned orders and considered argument advanced by counsel for the revenue. The Tribunal has answered the question of chargeability of interest, against the revenue by relying upon a judgment of this Court in Income Tax Appeal No.36 of 2004 (Commissioner of Income Tax v. Ashok Kumar) (supra). The argument by counsel for the revenue, based upon explanation (2) to Section 132B of the Act disregards the fact that the explanation came into force on 01.06.2013, whereas the present case relates to assessment year 2008-09. This apart the explanation is not retrospective in operation and is not referred to as a ground of appeal much less has it been framed as a substantial question of law. In view of what has been recorded hereinabove, question no.3 having already been answered against the revenue in Income Tax Appeal No.36 of 2004 (Commissioner of Income Tax v. Ashok Kumar, (2011) 334 ITR 355 (P&H), the appeal lacks merit and is, therefore, dismissed.

(RAJIVE BHALLA) JUDGE

September 29, 2014 (AMIT RAWAL) nt JUDGE

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