Joint Commissioner of Income Tax, Surat v. Saheli Leasing & Industries Ltd.

Leviability of penalty under Section 271(1)(c) of the Income Tax Act, 1961 (Explanation 4(a)) where returned and assessed income is nil or loss.

Date of Order: July 5, 2010
Case Law No: GIB-SC-2010-01
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CASE DESCRIPTION / SUMMARY

Background

The assessee, a leasing company, returned nil income for AY 1995-96 after claiming 100% depreciation on leased plant and machinery. The Assessing Officer disallowed Rs. 24,22,531 (identical lease agreements with only party names changed); assessed income remained nil, yet penalty of Rs. 11,14,364 was levied under Section 271(1)(c) and confirmed by the CIT(A). The ITAT, following its Special Bench in Apsara Processors, deleted the penalty holding that none is leviable where income is nil or loss, and the Gujarat High Court dismissed the Revenue's appeal at admission by a cryptic order. The issue before the Supreme Court was whether penalty can be levied where concealment merely reduces a returned loss or the assessed income remains nil or loss, and whether Elphinstone Spinning stood in the way.

Final Verdict

The Court allowed the Revenue's appeals and set aside the orders of the Tribunal and High Court, leaving the Revenue free to proceed on merits. It held the issue squarely covered by the three-Judge Bench decision in CIT v. Gold Coin Health Foods (P) Ltd., which overruled Virtual Soft Systems: "income" includes loss (negative income), the object of Section 271(1)(c) is to penalise concealment or inaccurate particulars, and the amendment to Explanation 4(a) was clarificatory. Elphinstone Spinning, rendered under the 1922 Act on additional tax on dividends, was distinguished as it concerned a charging provision with a different object, so no reference to a larger Bench was needed. Penalty under Section 271(1)(c) is leviable even where returned or assessed income is nil or loss, because concealment of income, and not payment of tax, is the trigger. The Court also criticised the High Court's cryptic order and reiterated guidelines for writing reasoned judgments.

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