[NON-REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2704 OF 2022

Late Shri Gyan Chand Jain through LR ...Appellant

Versus

Commissioner of Income Tax-I ...Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.03.2016 passed by the High Court of Judicature for Rajasthan, Jaipur in D.B. Income Tax Appeal No.33 of 2014 by which the High Court has allowed the said appeal preferred by the Revenue and has

www.taxcode.in

set aside the order passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'ITAT') deleting the penalty under Section 271(1)(c) of the Income Tax Act (for short 'the Act'), the assessee has preferred the present appeal.

2. It is mainly submitted on behalf of the appellant that in view of the CBDT (Central Board of Direct Taxes) Circular No.21 of 2015 dated 10.12.2015 the appeal preferred by the Revenue was not maintainable. It is the case on behalf of the appellant that in view of the aforesaid circular no appeal can be filed by the Department in any High Court, for non-payment of taxes, where the tax effect is less than Rs.20,00,000/-. It is the case on behalf of the appellant that in view of the order passed by the CIT(A) and in view of the subsequent demand, the penalty amount was reduced to Rs.6,00,000/- (approximately) and therefore when the tax effect would be less than Rs.20,00,000/-, in view of the

CBDT Circular dated 10.12.2015 the appeal preferred by the Revenue before the High Court was not maintainable.

2.1 Learned counsel appearing on behalf of the appellant has also made some submissions on merits on the jurisdiction of the Additional Commissioner of Income Tax. However considering the definitions contained in Section 2(28C) read with Section 274(2) of the Income Tax Act, 'Joint Commissioner' means a person appointed to the post of Joint Commissioner of Income Tax and includes Additional Commissioner of Income Tax and in the present case the approval of the Additional Commissioner of Income Tax was obtained, we see no reason to interfere with the findings recorded by the High Court on merits on the powers of the Additional Commissioner to grant the approval sought by the AO for imposing penalty under Section 271(1)(c) of the Income Tax Act.

2.2 Now so far as the primary submission on behalf of the appellant assessee that as the penalty amount was substantially reduced to Rs.6 lakhs and even the subsequent demand notice was for an amount of Rs.6 lakhs (approximately) only and therefore in view of the CBDT Circular dated 10.12.2015 the tax effect being lower than the permissible limit to prefer the appeal before the High Court and therefore the appeal before the High Court was not maintainable is concerned, at the outset it is required to be noted that what was assailed by the Revenue was the penalty amounting to Rs.29,02,743/- and not the penalty reduced by the CIT(A). Before the Tribunal, both the Revenue, as well as the assessee, preferred the appeals and the entire penalty amounting to Rs.29,02,743/- was an issue before the Tribunal as well as before the High Court. The subsequent reduction in penalty in view of the subsequent order cannot oust the jurisdiction. What is required to be considered is what was under challenge before the Tribunal as well as the High Court. At the cost of

repetition, it is observed that what was challenged by the Revenue was the penalty amounting to Rs.29,02,743/- and not the subsequent reduction of penalty by the CIT(A). The aforesaid aspect has been dealt with by the High Court in paragraph 17 of the impugned judgment and order. We are in complete agreement with the view taken by the High Court. Therefore, it cannot be said that the appeal before the High Court at the instance of the Revenue challenging the order passed by the ITAT was not maintainable in view of CBDT circular dated 10.12.2015.

4. In view of the above and for the reasons stated above there is no substance in the present appeal and the same deserves to be dismissed and is accordingly dismissed. No costs.

.....J.
[M.R. SHAH]

www.taxcode.in

.....J.
[B.V. NAGARATHNA]

NEW DELHI;
APRIL 19, 2022