

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12TH DAY OF DECEMBER 2007

PRESENT:

THE HON'BLE Mr. JUSTICE K.L.MANJUNATH

AND

THE HON'BLE Mr. JUSTICE ARAJI NAGARAJ

ITA NO.406/2003

BETWEEN:

1. THE COMMISSIONER
OF INCOME TAX
SPECIAL RANGE,
C.R.BUILDING,
QUEENS ROAD,
BANGALORE.

2. THE DEPUTY COMMISSIONER
OF INCOME TAX,
SPECIAL RANGE-6,
C.R. BUILDING,
QUEENS ROAD,
BANGALORE.

... APPELLANTS

(By Sri.M.V. SESHACHALA, ADV)

AND :

M/S.NANDA WIRES PVT.LTD.,
NO.59/1, N. BLOCK,
RAJAJINAGAR,
BANGALORE.

...RESPONDENT

(BY SRI. K. NARAYANA, B.R. BABU AND J. SARASWATHI,
ADVS.)

THIS I.T.A. IS FILED U/S.260-A OF I.T.ACT 1961, PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.515/BANG/1999 DATED 25.04.2003 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, SPECIAL RANGE-6, BANGALORE AND ETC., IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA IS COMING ON FOR FINAL HEARING THIS DAY, K.L.MANJUNATH J., DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is by the revenue challenging the order passed by the Income Tax Appellate Tribunal, Bangalore bench in ITA.No.515/Bang/99 dated 25.4.2003 wherein the order passed by the Commissioner of Income Tax (Appeals), Bangalore has been confirmed.

2. It is the case of the revenue that a penalty proceeding under Section 271(1)(c) of the Income Tax Act was initiated. Accordingly a notice was issued on 26.3.1993. Since the assessee did not sent any reply, a final notice was issued on 15.9.1993 posting the case on 24.9.1993. On that day, the representative of the assessee appeared. However, he did not file his objections but he sought time to file objections till 28.9.1993. The request was granted. Thereafter also no reply was filed by the assessee. In the circumstances, an order



was passed on 30.9.1993 levying a penalty of Rs.4,37,000/- for the assessment year 1990-91. This order was questioned by filing an appeal before the Commissioner of Income Tax (Appeals). Before the Commissioner of Income Tax (Appeals), the assessee explained the circumstances to show that there was no intention to conceal the particulars under Section 143(1)(a) of the Income Tax Act. Therefore, the Commissioner of Income Tax (Appeals) allowed the appeal and set aside the findings of the Assessing Officer, against which, an appeal was filed by the revenue before the Income Tax Appellate Tribunal, which appeal also came to be dismissed by the Tribunal. Challenging the concurrent findings of the authorities below, the present appeal is filed, raising the following substantial question:

“Whether the Commissioner of Income Tax (Appeals) as well as the Tribunal was justified in setting aside the order passed by the Assessing Officer when no cause was shown before the Assessing Officer?”

3. Having heard the counsel for the parties, we are of the opinion that the order passed by the Tribunal as well as the



Commissioner of Income Tax (Appeals) have to be set aside and the matter has to be reconsidered by the Assessing Officer for the following reasons:

4. Admittedly, the representative of the assessee had appeared before the Assessing Officer. In spite of granting several opportunities to the assessee, the assessee failed to avail the same. For the first time, the assessee had shown some cause before the Commissioner of Income Tax (Appeals). Accepting the same, the Commissioner of Income Tax (Appeals) allowed the appeal. According to us, when the cause needs to be shown before the Assessing Officer and when the Assessing Officer was required to examine the cause shown by the assessee, it was not proper for the Commissioner of Income Tax (Appeals) to accept the cause shown by the assessee and to set aside the order passed by the Assessing Officer. In all fairness, it was the duty of the Commissioner of Income Tax (Appeals), to remand the matter to the Assessing Officer to reexamine the matter in the light of the cause shown by the assessee before him. Therefore, we have to remand the matter to the



Assessing Officer by setting aside the orders impugned herein, without answering the question of law framed in this appeal.

5. Accordingly, the appeal is allowed. The impugned orders of the Income Tax Appellate Tribunal and the Commissioner of Income Tax (Appeals) are set aside. The matter is remanded to the Assessing Officer to reconsider the matter in the light of the above said discussion.

Sd/-
Judge

Sd/-
Judge

RS/*