

(2014) 01 DEL CK 0379

In the Delhi High Court

Case No : ITA 308 of 2013 and ITA 309 of 2013

Central Warehousing Corporation

APPELLANT

Vs

CIT

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Income Tax Act, 1961 — Section 10(29) 143(3) 147 148

Citation : (2014) 2 AD 517 : (2014) 364 ITR 503

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : M.S. Syali and Ms. Husnal Syali Nagi and Mr. Harkunal Singh, for the Appellant; Rohit Madan and Mr. P. Roychaudhuri, for the Respondent

Judgement

S. Ravindra Bhat, J.—The assessee by way of this appeal impugns the order of the Income Tax Appellate Tribunal (ITAT) dated 09.09.2011. The impugned order dismissed the appeal preferred by the assessee. The brief facts of the case are that the appellant, a statutory corporation, claimed the benefit of Section 10(29) contending that its income was exempted from taxation as it carried on warehousing and storage activity. The original assessment for AY 1995-96 was made on 22.01.1998. The assessee's contentions were accepted in respect of a portion of its income which was held to be exempted u/s 10(29) of the Income Tax Act, 1961. At that time the prevailing law had been declared by the Supreme Court in Union of India and another Vs. U.P. State Ware Housing Corporation, The eligibility of corporations and companies carrying on warehousing activities to claim benefit of Section 10(29) was finally pronounced by the Supreme Court in Orissa State Warehousing Corporation Vs. Commissioner of Income Tax, . The Supreme Court held that the question of exemption would arise and pertain to that part of income which is derived by letting out of godowns and warehouses for the purposes of Section 10(29) and the other income would not be eligible for such benefits. The assessing officer issued notice u/s 147/148 claiming that he has reasons to believe that income had escaped assessment for AY 1995-96. The reasons to believe, inter alia, cited the decision of Supreme Court in Orissa

Warehousing (supra). The appellant felt aggrieved by the reopening of assessment and approached this Court which in its judgment and order dated 14.01.2011 in ITA Nos. 464-465 and 473/2010 remitted the matter for reconsideration by the Tribunal. The operative portion of this Court's directions are as follows:-

33. The Tribunal has thus justified the action of the Assessing Officer only on the basis of that judgment of Supreme Court in the case of Orissa Warehouse (supra) provided fresh opinion. The question as to whether this very issue was discussed in the original assessment proceedings or not has not even been touched upon. As far as these assessment years are concerned, assessment was done u/s 143(3) of the Act. Therefore, the argument of the assessee that it was a case of change of opinion has not been addressed at all by the Tribunal which should have been gone into when it was so specifically raised by the assessee. For this reason alone, we set aside the order of the Tribunal and remit the case back to the Tribunal for fresh consideration limiting its discussion only on the aspect as to whether the reason given by the Assessing Officer for reopening of the reassessment was the aspect considered earlier in the original assessment proceedings and it would be a case of mere change of opinion or this aspect was not considered at all and, therefore, provided proper ground for reopening the assessment.

34. We are remitting the case back for this limited purpose for obvious reason that in so far as other grounds raised by the assessee for challenging the validity of notice u/s 147/148 of the Act are concerned, we have concurred with the views expressed by the ITAT hereinabove. The appeals stand disposed of in the aforesaid manner.

2. By the impugned order the assessee's appeal has been rejected. The grievance articulated by the petitioner is that the Tribunal has not followed the directions that were spelt out in the order made by this Court on 14.01.2011. It is contended that para 33 was specific as to whether the question urged i.e. that the "reasons to believe" was based upon a mere change of opinion, but has not been addressed at all despite a direction in that regard.

3. Counsel for the revenue urged that the Tribunal's order cannot be faulted and the relevant aspects arising out of the assessee's contention and specifically with respect to eligibility for exemptions u/s 10(29) has been suitably discussed and a reasoned order given by the ITAT which does not require disturbance of this Court.

4. The impugned order in paras 1 to 5 notes the contentions of the parties. The operative portion which discusses the relevant contentions and concludes the issues against the assessee reads as follows:-

We have heard rival contentions and perused the relevant material available on record. We find merit in the argument of learned DR. It is undisputed that Hon'ble Supreme Court delivered its judgment in the case of Orissa State

Warehousing Corporation (supra) on 01.04.1999. The original assessment orders for A.Y. 1995-96 & 1996-97 were framed by the AO dates mentioned above, prior to the pronouncement of the judgment of the Hon"ble Supreme Court. With the Hon"ble Supreme Courts decision it was incumbent on AO to examine whether the claim allowed by him u/s. 10(29) during the original assessment proceedings was in conformity with the same. We are unable to accept the proposition advanced by the learned counsel that AO had already exercised his opinion in respect of the matter which is subsequently decided by the Hon"ble Supreme Court was going to hold in Orissa State Warehousing Corporation (supra). The Hon"ble Allahabad High Court in the case of Kartikeya International (supra), has held that subsequent Supreme Court judgment constitutes law of the land and accordingly the AO"s reassessment with satisfaction that exemption u/s. 10(29) has been granted to assessee which was at variance of Hon"ble Supreme Court judgment and income had escaped assessment is justified. The exercise of power u/s. 148 by AO was to implement Supreme Court judgment and not change of his opinion. Therefore, the reopening was valid and sustainable. In our view, the judgment in the case of Kartikeya International (supra) is squarely applicable to assessee"s facts. Respectfully following the same we hold that the theory of reassessment based on change of opinion is not applicable to assessee"s case as the AO was implementing the law of the land as declared by the Hon"ble Supreme Court. Thus, we find no force in the contention raised by the assessee in its cross objections for both the assessment years in question. Thus, we decide the issue of re-opening of assessments in favour of revenue and against the assessee.

Consequent to our decision, the result of revenue"s appeals and assessee"s C.Os for A.Y. 1995-96 & 1996-97 will remain as held in ITAT"s consolidated order dated 31.(SIC)0.2008 viz.

- i. Revenue"s appeals are partly allowed for statistical purposes.
- ii. Assessee"s C.Os are partly allowed for statistical purposes.

5. We are afraid that the Tribunal has misdirected itself as to the scope of remand. Though in the earlier portion of the impugned order the Tribunal extracted this Court"s directions which specifically require the Tribunal to go into the question as to whether the "reasons to believe" u/s 147/148 in this case were based upon mere change of opinion, no opinion has been recorded or arrived at; the order ex facie discloses complete non-application of mind to the directions of this Court, resulting in a remand to ensure application of mind to the assessee"s contention in this regard. This Court is also mindful of the circumstance that the question whether the reasons to believe constitute a change of opinion is essentially for discussion in every case of where the assessee challenges the notice u/s 148, in view of the dicta of the Supreme Court in Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited,

6. For the above reasons the matter requires fresh consideration. Accordingly,

the matter is remitted for fresh consideration of the ITAT so that the directions in the previous order of this Court are duly complied with and specific findings recorded in respect of the fact whether the reasons to believe constitute a change of opinion. The appeal is allowed in the above terms.