
(1978) 11 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 66 of 1974

Chhat Mull Aggarwal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-11-1978

Acts Referred:

Income Tax Act, 1961 — Section 246(1)

Citation : (1979) 8 CTR 368 : (1979) 116 ITR 694

Hon'ble Judges : S.S. Sidhu, J; Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : B.S. Gupta, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

B.S. Dhillon, J.—The assessee is a HUF. The assessee has income from interest and house property. The assessment in question relates to the year 1970-71, and the relevant previous year ended on 31st of March, 1970. During the said previous year, the assessee had invested a sum of Rs. 83,042 in the construction of a house. As regards the total cost of construction of the said house, the ITO had two reports before him, one from the S.D.O., P.W.D., giving the estimated cost of the house as Rs. 87,668 and the other from the Income Tax inspector giving the cost of construction as Rs. 1,06,846. The ITO made an addition of Rs. 15,000 as being the assessee's unexplained investment in house property, after noting that the assessee had agreed to the said addition.

2. The said addition of Rs. 15,000 was assailed by the assessee on appeal before the AAC. It was contended by the assessee that the construction of the house in question was completed only during the year ending 31st March, 1971, and that the total cost of construction was Rs. 98,152. He explained that since he had actually spent Rs. 15,000 over and above Rs. 83,000, he agreed to the addition of Rs. 15,000 but did not understand the consequences of this agreement that the said amount would be added to his income for the assessment year 1970-71. The AAC accepted the appeal filed by the assessee and deleted the addition of

Rs. 15,000.

3. On appeal filed by the ITO, the Tribunal reversed the AAC's order. It was held that the cost of construction of the house in question was irrelevant to the issue before the AAC and that, in the absence of a rectification application or an affidavit explaining the circumstances which misled the assessee to give his consent to the addition in question, the very appeal before the AAC was incompetent.

4. The assessee made an application to the Tribunal for making of a reference to this court u/s 256(1) of the I.T. Act, 1961 (hereinafter called "the Act"), and consequently the Tribunal has referred the following two questions of law for our opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was, in law, right in holding that in the absence of a rectification application and in the absence of an affidavit of the assessee explaining the circumstances which misled the assessee to give his consent to the addition of Rs. 15,000 no appeal could lie to the Appellate Assistant Commissioner ? (2) Whether, on the facts and in the circumstances of the case, the Tribunal was, in law, right in holding that it was irrelevant for the AAC to go into the merits of the cost of construction ?"

5. After hearing the learned counsel for the parties, we are of the opinion that both these questions of law referred to us have to be answered in the negative and against the revenue.

6. As regards the first question, it cannot be held as a matter of law that the remedy of appeal provided by the provisions of Section 246(1)(c) of the Act cannot be availed of by the assessee without having filed a rectification application before the ITO in a case where the order of the ITO shows that the assessee agreed to the addition in the income. There is no provision in the I.T. Act, wherein the remedy of appeal against the order of the ITO or against the order of the AAC is barred if the impugned orders make mention that the order had been passed on the agreement of the assessee. The provisions of Section 246(1)(c) of the Act entitle an assessee to file an appeal against the order of the ITO before the AAC where the assessee denied his liability to be assessed under the Act. It is a different matter, if the AAC comes to the conclusion that the order was passed on the admission of the assessee and the assessee is unable to explain that the admission was wrongly recorded under some mistaken belief of fact and law; in that case, the AAC may dismiss the appeal on merits, but it cannot be held as a matter of law that no appeal is competent as has been held by the Tribunal. It is no doubt true that in case where the admission of the assessee has been wrongly recorded in the assessment order, it is open to the assessee to file a petition for rectification, but if the said order is appealable it is equally open to the assessee to avail of the remedy of appeal and the appellate authority shall have to decide the appeal on merits. Nor is it necessary for the assessee to file an affidavit in support of his submissions in all cases. The

assessee may choose to file an affidavit in support of his submissions and if he chooses not to file any such, the circumstances appearing on the file have to be judged in the light of the material available and if there are sufficient circumstances on the file to come to the conclusion that the admission made by the assessee was not binding on him, in that case, he will be entitled to the relief in appeal. In the case in hand, the order of the ITO no doubt makes mention that, after discussion, the assessee agreed that an addition of Rs. 15,000 may be made in his income from other sources towards the cost of construction, but this was sought to be explained by the assessee that he understood that the amount of Rs. 15,000 was spent by him in the year succeeding the year of assessment. The assessee sought to explain that he never understood that this amount will be added to the income in the assessment year in question. This explanation was accepted by the AAC. The AAC further took notice of the fact that the assessee had shown the cost of construction of Rs. 83,000 in the year 1970-71 and another Rs. 15,000 in the year 1971-72 and thus the total cost of construction came out to be Rs. 98,152, whereas according to the estimate of cost prepared by the S.D.O., P.W.D., the cost of construction was Rs. 87,669. The ITO himself estimated the cost of construction as Rs. 1 lakh. On the basis of this finding, the AAC set aside the addition of Rs. 15,000 as ordered by the ITO. It is pertinent to note that the AAC recorded a finding of fact that the assessee himself showed the total cost in the two years at Rs. 98,152. All these findings could be recorded by the AAC in appeal and it was not necessary in law that he should have refused to hear the appeal and the assessee could only have the recourse of the rectification application. It is quite clear that when the ITO himself assessed the estimated cost of the house as Rs. 1 lakh and the assessee also showed the total cost of the house in the two years as Rs. 98,152, there was absolutely no reason for the addition of Rs. 15,000 as has been held by the AAC.

7. In our view, the Tribunal erred in law in taking the view that without the assessee's having filed the rectification application and without he having filed an affidavit, the appeal before the AAC was not maintainable. From the record of the case itself, the assessee was able to convince the AAC that the admission was not binding on him and was made under a misapprehension that this amount of Rs. 15,000 was being added for the subsequent assessment year. The AAC was right in reversing the order of the ITO and, consequently, he was duty bound to go into the merits of the cost of construction which he rightly did.

8. For the reasons recorded above, both the questions referred for our opinion are answered in the negative. There will be no order as to costs.

S. S. Sidhu, J.

9. I agree.