(2011) 11 KAR CK 0141

In the Karnataka High Court

Case No : ITA No''s. 1033 of 2006 (A.Ys. 1987-88 to 1997-98)

CIT and Dy. CIT — APPELLANT

Vs

Gayathri Foundation — RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:
Income Tax Act, 1961 — Section 132, 140 A, 158 BFA, 158 BFA (1), 158 BS

Citation : (2011) 11 KAR CK 0141

Hon'ble Judges : V.G. Sabhahit, J;S.N. Satyanarayana, J

Bench : Division Bench

Advocate : G. Kamaladhar, for the Appellant; S. Sukumar, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal by the revenue has been admitted on 17-7-2007 for consideration of the following substantial question of law:

Whether the appellate Tribunal is not right in holding that interest u/s 158BFA of the Act cannot be levied in respect of returns filed before 1-6-1999 since the payment of self assessment tax is covered u/s 140A of the Act?

The material facts leading up to this appeal are as follows :

A search was conducted u/s 132 of the income tax Act (hereinafter called as the Act) on 14-3-1997 and undisclosed income was discovered. Hence, notice was issued u/s 158BC of the Act on 27-11-1997. The assessee filed returns for the block period on 31-12-1998 for assessment years 1987-88 to 1997-98. Thereafter, the assessing officer proceeded to complete the block assessments and levied interest u/s 158BFA(1) of the Act from 12-1-1998 to 31-12-1998 by order dated 18-2-1999. In appeal, the appellate Commissioner on merits of the matter granted relief in favour of the assessee. However, insofar as the interest component u/s 158BFA(1) is concerned, the order of the assessing officer had been confirmed. However, the Tribunal by its order dated 5-2-2006 set aside the order passed by the appellate authority confirming the order of the assessing officer and held that no interest u/s 158BFA(1) of the Act has to be imposed. Wherefore, this appeal is filed and admitted for consideration of the above referred substantial question of law.

2. The learned counsel appearing for the appellants submits that the identical substantial question of law which has been framed in ITA No. 277/2004 c/w 281/2004 has been answered in favour of the revenue and against the assessee by the Division Bench of this Court by order dated 31-72009. However, the learned counsel appearing for the respondent submitted that SLP is filed in (Civil) No. 274/2011. Hence, a direction may be issued to the assessing officer to give force to the judgment of this Court only after the matter pending before the Supreme Court is disposed of.

3. We have given careful consideration to the contention of the learned counsel appearing for the parties and scrutinised the material on record. It is clear from the scrutiny of the material on record that the appellate authority has confirmed the order passed by the assessing officer awarding interest u/s 158BFA (1) of the Act. However, the Tribunal held that interest under said section could not have been levied in respect of the returns filed before 1-6-1999 since there was no liability for payment of self-assessment tax u/s 140A of the Act. Wherefore, it is clear that the Tribunal has set aside the order passed by the appellate authority confirming the order of the assessing officer and the assessing officer and the order of the Tribunal has been set aside by this court. Wherefore, the question of deferring action on the basis of the submission of the learned counsel for the respondent does not arise. Accordingly, we answer the substantial question of law in favour of the revenue and against the assessee and pass the following :

ORDER

The appeal is allowed. The order passed by the Income Tax Appellate Tribunal in IT(SS)A.5/Bang/2002 dated 5-2-2006 is set aside and the order passed by the appellate authority confirming the order of the assessing officer u/s 158BC of the Act is restored.