(2010) 09 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 60 of 1999

CIT APPELLANT

Vs

Satpal Pandit and Co. RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:
Income Tax Act, 1961 — Section 254(2), 260, 260(1), 260A

Citation : (2011) 335 ITR 568 : (2011) 333 ITR 568

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—The instant appeal has been filed by the Revenue u/s 260A of the income tax Act, 1961 (in short "the Act"), against the order dated February 26,1999, passed by the income tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in I.T.A. No. 515(ASR)/1985 for the assessment year 1981-82, proposing the following substantial question of law :

Whether, on the facts and in the circumstances of the case, the learned Tribunal was right in law in allowing the miscellaneous appli''cation of the assessee ahd recalling its order holding that the remain''ing grounds and issues are to be decided in order to give justice to the assessee as well as the Revenue particularly when neither there is any ground/issue of the Revenue having remained undecided nor is there any cross-objection, etc., having been filed by the assessee ?

2. Briefly the facts necessary for deciding the present appeal are that the assessee following the calendar year as its previous year filed return declar''ing a total income of Rs. 1,35,550 for the assessment year 1981-82 on June 30, 1981. The assessment was completed on September 24, 1984, and a total income of Rs. 3,32,035 was assessed by the Assessing Officer. Against the'' said

assessment,'' the'' assessee'' approached the'' Commissioner of income tax (Appeals) (in short "the CIT(A)") by way of appeal and the Commissioner of income tax (Appeals), vide order dated May 17, 1985, while allowing the appeal annulled the assessment order being barred by limitation. Against the order of the Commissioner of income tax (Appeals), the Revenue filed an appeal and the Tribunal, vide order dated November 8, 1994, upheld the order of the Commissioner of income tax (Appeals). Against the order of the Tribunal, the Revenue filed reference application for drawing the statement of the case and referring the question of law to this court, the Tribunal, vide order dated October 17, 1995, referred the question of law to this court. This court, vide order dated September 29, 1997, passed in I. T. R. No. 142 of 1996 decided the question of law in favour of the Revenue and against the assessee. In pursuance of the judg''ment of this court, the Tribunal allowed the appeal of the Revenue, vide order dated December 23, 1997. Thereafter, on the assessees application, the Tribunal, vide order dated February 26, 1999, recalled its order holding that the remaining grounds and issues were to be decided. Hence, the present appeal by the Revenue.

3. We have heard learned counsel for the Revenue.

4. It is undisputed that the assessee had filed an appeal against the assess''ment order dated June 30, 1981, before the Commissioner of income tax (Appeals) raising challenge to the additions made by the Assessing Officer. It was during the course of hearing of appeal that the assessee moved an application dated May 20, 1985, challenging the validity of the assessment order for the assessment year in question on the ground of limitation. The Commissioner of income tax (Appeals) had accepted the aforesaid plea of the assessee and had annulled the assessment. However, the Commis''sioner of income tax (Appeals) had not adjudicated the controversy on the merits. The Revenue had challenged the order of the Commissioner of income tax (Appeals) and ultimately as noticed earlier, this court in ITR No. 142 of 1996 (CIT v. Sat pal Pandit and Co., Chahar Bagh, Jalandhar) decided on September 29,1997, had adjudicated the legal issue in favour of the Revenue whereupon the Tribunal passed order allowing the appeal of the Revenue u/s 260 of the Act. Since the Tribunal had decided the appeal on legal ground of limitation in consonance with the order of this court, the order that was required to be passed was to remand the case to the Commissioner of income tax (Appeals) to decide the appeal of the assessee on the merits which had remained untouched while passing the order dated June 17, 1985, by the Commissioner of income tax (Appeals). The assessee noticed the aforesaid mistake apparent on the record of the Tribunal in its order dated December 23, 1997, and filed an application u/s 254(2) of the Act for rectification which was rectified, vide order dated February 26, 1999, by recalling the order dated December 23, 1997, and fixing the case for deciding the other issues in the appeal.

5. After the reference was answered by the High Court, the Tribunal was required

to pass an order u/s 260(1). It order to discern the scope of section 260(1), it would be material to reproduce section 260 which at the relevant time existed as under :

260. Decision of High Court or Supreme Court on the case stated.--(1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(2) The costs, of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the court.

6. According to the aforesaid provision, the High Court or the Supreme'' Court after deciding the question of law referred to it, is required to deliver its judgment containing the grounds on which such decision is founded and a copy is to be sent to the Registrar of the Appellate Tribunal so that necessary orders to dispose of the case in conformity with the judgment is passed. When the Tribunal disposes of the appeal conforming to the deci''sion of the High Court or the Supreme Court, the Tribunal exercises its appellate powers. In other words, the Tribunal retains all the powers which are there at the time of hearing of the original appeal. In the present case, the Commissioner of income tax (Appeals) had only decided the question of limitation and had not touched the merits of the additions made by the Assessing Officer while disposing of the appeal, aggrieved against which, the Revenue had approached the Tribunal. The question of law was answered in favour of the Revenue and, thereafter, the Tribunal was required to remand the case to the Commissioner of income tax (Appeals) for adjudication on the merits. However, this was not done by the Tribunal while passing the order on December 23, 1997. Accordingly, the Tribunal while passing the order u/s 254(2) of the Act had revived the appeal in order to do justice between the parties and to pass appropriate orders thereon.

7. No illegality or perversity could be pointed out in the order passed or'' the approach of the Tribunal which may call for interference by this court. The substantial question of law as proposed is answered against the Revenue.

8. Accordingly, the appeal is dismissed.

