(2005) 01 MP CK 0117

In the Madhya Pradesh High Court

Case No : IT Appeal No. 64 of 2000

Commissioner APPELLANT

Vs

Bhagirath Bros. RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2007) 295 ITR 569 : (2006) 150 TAXMAN 489

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain and V. Mandlik, for the Appellant; Himanshu Joshi, for the Respondent

Judgement

A.M. Sapre, J.

This is an appeal filed by the revenue (income tax department) u/s 260A of the Income Tax Act against an order, dated 26-7-2000, passed by I.T.A.T. in I.T.A. No. 304/IND/95 for the assessment year 1987-88.

2. In short, the question that arises for consideration in this appeal is, whether this appeal involves any substantial question of law as is required to be made out u/s 260A of the Act that being the pre-requisite for admission of appeal.

3. Heard Shri R.L. Jain, learned senior counsel with Ku. V. Mandlik, learned counsel for the appellant and Shri Himanshu Joshi, learned counsel for the assessee.

4. Having heard learned counsel for the appellant and having perused record of the case, we are of the opinion that the appeal does not involve any substantial question of law for consideration in this appeal and that two questions proposed by the appellant (revenue) do not satisfy the rigour of substantial question of law within the meaning of section 260A of the Act.

5. The issue relates to grant of certain deletions which were made by the

assessing officer in the course of assessment proceedings initiated against the assessee. The assessing officer did not accept the explanation offered by assessee and treating the said amount to be that of assessee added in his total income. The Commissioner (Appeals) as also the Tribunal set aside the order of assessing officer insofar as it related to additions made by him (assessing officer). In other words, the Commissioner (Appeals) and Tribunal accepted the factual explanation coupled with the evidence tendered by assessee in relation to the impugned additions made by assessing officer and held that since the same have been properly explained and, hence, they cannot be included while computing the total income of the assessee. Since, it was a case of raid, and hence, assessee was called upon to explain the source of income so as to enable the assessing officer to determine the actual taxable liability arising out of the raid proceedings.

6. In our opinion, once the Commissioner (Appeals) and then lastly the Tribunal have accepted the explanation of the assessee and, accordingly, deleted certain additions made by assessing officer then it does not involve any substantial issue of law as such. In other words, this High Court in its appellate jurisdiction which is defined u/s 260A ibid cannot again de novo hold yet another enquiry with a view to find out whether explanation offered by assessee and which found acceptance to two appellate authorities namely, Commissioner (Appeals) and Tribunal, is good or bad, or whether it was rightly accepted, or not. It is only when the factual finding is entirely de hors the subject, or that it is based on no reasoning, or that it is absurd to the extent that no reasonable prudent man can ever reach to such conclusion, or that it is against the provision of law, a case for substantial question of law is made out.

7. In our view, no such error could be noticed by us in the impugned order. The Tribunal did go into the details of explanation offered by assessee and accepted the explanation thereby upholding the view of Commissioner (Appeals). As a consequence, the certain additions made came to be deleted.

8. We thus, do not find any merit in the appeal. It fails and is dismissed in limine by holding that it does not involve any substantial question of law.

No costs.

