(2007) 04 AHC CK 0033

In the Allahabad High Court

Case No : IT Appeal No. 28 of 1999

Commissioner of Income Tax, Allahabad — APPELLANT

Vs

Jaiswal Constructions — RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:
Income Tax Act, 1961 — Section 139, 139(8), 147, 148, 215

Citation : (2007) 04 AHC CK 0033

Hon'ble Judges : R.K. Agrawal, J;Bharati Sapru, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The present appeal u/s 260A of the income tax Act, 1961 hereinafter referred to as the Act, has been admitted vide order dated 12-12-2000 on the following substantial question of law:- Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that interest u/s 139(8) and section 217 of the income tax Act, 1961 cannot be charged in the present case, because assessment was completed u/s 148 of the Act.?

The assessment year in question is 1983-84 for which the accounting period ended from 31-3-1983. The respondent assessee has not fled any return of income u/s 139 of the Act. However, upon issue of notice u/s 148 on 16-8-1985, the assessee furnished a return of Income on 16-9-1986. The income declared was Rs. 8,520 which had been assessed at Rs. 64,692. The assessing officer also charged interest u/s 139(8) and 217 of the Act. The Tribunal had deleted the charging of interest under the aforesaid provisions on the ground that as it was not regular a assessment but a case of re-assessment therefore interest u/s 139(8) and 217 cannot be charged.

2. We have perused the order of the Tribunal and we find that by Taxation Law Amendment Act, 1984 with effect from 1-4-1985 Explanation-2 was inserted in sub-section 8 of section 139 of the Act which reads as follows:-

Explanation 2: Where, in relation to an assessment year, an assessment is made for the first time u/s 147, the assessment so made shall be regarded as a regular assessment for the purposes of this sub-section.

3. Similar amendment was made in section 215 of the Act by insertion of sub-section 6 of the following effect.

Where, in relation to an assessment year, an assessment is made for the first time u/s 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section and sections 216, 217 and 273.

4. The scope of Explanation 2 as inserted by the Taxation Laws Amendment Act, 1984 came-up for consideration before the Apex Court in the case of K. GOVINDAN and SONS Vs. COMMISSIONER OF INCOME TAX, and the Apex Court has held that it is clarify category in nature and shall apply retrospectively. Similar would be the position with regard to sub-section 6 in section 215 of the Act.

5. In this view of the matter, we are of the considered opinion that the Tribunal was not justified in deleting the interest u/s 139(8) and section 217 of the Act. The question of law is answered accordingly. The appeal stands partly allowed.