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In the Karnataka High Court

Case No : Income Tax A. No. 403 of 2003

Commissioner of Income Tax and Another APPELLANT

Vs

Manjit Singh Sachdeva RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:
Income Tax Act, 1961 — Section 143 (1A), 143 (2), 154

Citation : (2009) 310 ITR 357

Hon'ble Judges : Deepak Verma, J;Anand Byrareddy, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; Y.V. Raviraj and S. Parthasarathi, for the Respondent

Judgement

1. Heard Sri M.V. Seshachala, learned Counsel for the appellants and Sri Y.V. Raviraj, learned Counsel for the respondent.

2. The Revenue is before us challenging the correctness, proprietary and legality of the order passed by the Income Tax Appellate Tribunal, Bangalore Bench, dated May 17, 2003, passed in I.T.A. No. 313/BANG/1998 for the assessment year 1993-94. The appeal before the Tribunal was also at the instance of the Revenue against the order passed by the Commissioner of Income Tax (Appeals) dated November 28, 1997.

3. Record shows that the following substantial question of law would arise for adjudication by this court.

1. Whether the two appellate authorities were justified and correct in holding that the intimation dated September 26, 1994, cannot be rectified u/s 154 of the Act and additional tax levied u/s 143(1A) of the Act as in the meanwhile notice u/s 143(2) of the Act dated November 18, 1993, had already been initiated?

4. Short facts, material for deciding the appeal in a nutshell, are as under:

The assessee is an individual. For the assessment year 1993-94 he had filed a

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return of income declaring a loss of Rs. 2,39,87,765 on August 30, 1993. This return of the assessee came to be processed u/s 143(1)(a) of the Act by the Assessing Officer on September 26, 1994. The Assessing Officer thereafter noticed that a mistake had crept into the intimation. The Assessing Officer instead of disallowing the loss of Rs. 2,39,87,765 being loss on account of share income from partnership concern, has allowed the same. Notice was issued to the assessee proposing the rectification. To this notice, the assessee replied that he had no objection for the proposed rectification. The Assessing Officer was pleased to hold that Section 75 of the Act having been amended to the effect that share income/loss from the firm is not taxable in the hands of the partners. Thus, there was no dispute regarding the legal position in this regard. Consequently, rectification order came to be passed on December 22, 1995, and additional tax was levied in a sum of Rs. 21,44,599.

The assessee feeling aggrieved by the said levy of tax, preferred an appeal before the Commissioner of Income Tax (Appeals)-III, Bangalore. The Commissioner of Income Tax (Appeals) was pleased to hold that no action u/s 154 of the Act could be initiated once notice u/s 143(2) of the Act was issued to the assessee on December 18, 1993. Thus, the Appellate Commissioner proceeded to cancel the rectification order by allowing the appeal filed by the assessee.

The Revenue feeling aggrieved against this order, preferred an appeal to the Income Tax Appellate Tribunal. The Tribunal was also of the considered view that once a notice u/s 143(2) of the Act has been issued for regular assessment, rectification of the intimation could not have been made. In other words, it concurred with the findings recorded by the Commissioner of Income Tax (Appeals) and dismissed the appeal of the Revenue. Feeling aggrieved, this further appeal at the instance of the Revenue before us.

5. After having heard the learned Counsel for the parties and after perusal 5 of the records, we are of the opinion that the question as projected herein stands answered by the judgment of the Supreme Court in the case of Commissioner of Income Tax Vs. Gujarat Electricity Board, . The following observations of the Supreme Court are relevant for deciding the aforesaid question, which read thus (page 85):

There is no dispute that Section 143(1)(a) of the Act enacts a summary procedure for quick collection of tax and quick refunds. Under the scheme, if there is a serious objection to any of the orders made by the Assessing Officer determining the income, it is open to the assessee to ask for rectification u/s 154. Apart therefrom, the provisions of Section 143(1)(a)(i) indicate that the intimation sent u/s 143(1)(a) shall be without prejudice to the provisions of Sub-Section (2). The Legislature, therefore, intended that, where the summary procedure under Sub-section (1) has been adopted, there should be scope available for the Revenue, either suo motu or at the instance of the assessee to make a regular assessment under Sub-section (2) of Section 143. The converse

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is not available; a regular assessment proceeding having been commenced u/s 143(2), there is no need for a summary proceeding u/s 143(1)(a).

In view of the aforesaid judgment of the Supreme Court, we have no hesitation to hold that the question of law as projected has to be answered in favour of the assessee and against the Revenue. We accordingly do so. The appeal stands finally disposed of.

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