(2016) 07 CAL CK 0025

In the Calcutta High Court

Case No : G.A. No. 824 of 2011 and I.T.A.T. No. 77 of 2011

Commissioner of Income-Tax — APPELLANT

Vs

Bata India Ltd. — RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:
Income Tax Act, 1961 — Section 153(3)

Citation : (2017) 295 CurTR 510 : (2016) 385 ITR 539

Hon'ble Judges : Girish Chandra Gupta and Asha Arora, JJ.

Bench : Division Bench

Advocate : Md. Nizamuddin, Advocate, for the Appellant; Mr. J.P. Khaitan, Sr. Advocate, Mr. S. Das, Ms. Sanjukta Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The subject matter of challenge in this appeal is judgement and order dated 16th September, 2004 by which the learned Income Tax Appellate Tribunal "A"Bench, Kolkata in ITA No. 1866 (Kol) of 2004 pertaining to the assessment year 1988-89 and Cross Objection No. 144/Kol/2004 dismissed the appeal preferred by the revenue and allowed the Cross Objection preferred by the assessee on the following facts :

"On going through the sequence of events, we find that on 29.06.1988 the assessee filed return for assessment year 1988-89 and the assessment was to be completed by 31.03.1991. However, before the last date of completion of assessment the Assessing Officer issued a letter on 14.03.91 informing the assessee for a special audit under section 142(2A). Thereupon, the assessee filed writ petition and filed on 28th March, 1991 and by even date the Hon''ble Calcutta High Court stayed the proceedings under section 142(2A) till dated 10.06.1991. On 11.06.1991 again proceeding under section 142(2A) was stayed till 21.08.1991. On 12.07.2001 appointment of special audit was quashed and the interim injunction was allowed. On 25.09.2001. The Ld. CIT(A)-II, Calcutta informed the assessee by letter dated 08.11.2001 that a special audit under section 142(2A) has been approved on the same terms and conditions as in earlier letter dated 06.03.1991. As such, the assessee was to obtain such report within four months from 08.11.2001. The assessee again filed petition before Hon''ble Calcutta High Court on 24.12.2001. The Hon''ble Calcutta High Court quashed the order of the Ld.CIT(A) dated 08.11.2001 on 09.09.2002. As such the assessment was to be completed by 20.09.2002 but as we have seen the assessment is completed much after this date i.e. on 31.03.2003. Even it is taken that the Assessing Officer was informed about the decision of Hon''ble Calcutta High Court on 25.11.2002 on which he issued notice under section 142(1) the assessment was to be completed within next 15 days which was legally available to the Assessing Officer but the assessment was completed on 31.03.2003. Under the circumstances, this order of the Assessing Officer is barred by limitation."

2. From the aforesaid narration of facts it would appear that the exclusion available to the assessing officer was for a period of 17 days under section 153. The order directing the special audit was quashed by the High Court on 9th September, 2002. Therefore, the assessment should have been completed by 26th September, 2002.

3. Even assuming that the assessing officer was informed of the order dated 9th September, 2002 only on 25th November, 2002 and even assuming that the time will start from 25th November, 2002, the assessment should have been completed within 17 days thereafter which admittedly was not done.

4. Mr. Khaitan, learned Senior Advocate has fairly drawn our attention to the following proviso appearing after Explanation under sub-section (4) of Section 153 which provides as follows :

"Provided that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to [in sub-sections (1), (1A), (1B), [(2), (2A) and (4)] available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly."

5. Even assuming that the assessing officer had 60 days to complete the assessment from 25th November, 2002, that would give him time till 25th January, 2003 whereas the assessment was completed on 31st March, 2003. Therefore, the assessment was hopelessly barred by limitation and that is the view taken by the learned Tribunal. Mr. Nizamuddin, learned advocate appearing on behalf of the revenue has not been able to find any fault with the view taken by the learned Tribunal.

6. The question raised by the revenue reads as follows :

"Whether on the facts and in the circumstances of the case the Ld.Tribunal erred in law in holding that the assessment is time barred without considering clauses

(ii) and (iii) of Explanation 1 below section 153(3) of I.T.Act, 1961 ?

7. The question is answered in the negative and in favour of the assessee. The appeal is therefore, dismissed.

8. Parties shall bear their own costs.

