(2009) 08 AHC CK 0272

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Gulam Mohammad RESPONDENT

Date of Decision : 19-08-2009

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

Citation : (2010) 320 ITR 168

Hon'ble Judges : Shashi Kant Gupta, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The assessment order u/s 143(1) of the Income Tax Act, 1961, hereinafter referred to as the Act, in respect of the assessment year 1990-91, was originally framed on January 4, 1991. On the basis of the report of the Departmental Valuation Officer in respect of investment made in the construction of building by the respondent-assessee at building material market in Maida Bazar, Kanpur, proceeding u/s 147/148 of the Act, was initiated and vide his order dated December 16, 1997, the Assessing Officer added the difference in the valuation made by the Departmental Valuation Officer and the investment shown by the assessee as income from other sources which order was upheld in appeal by the Commissioner of Income Tax (Appeals). However, the Tribunal, vide order dated November 28, 2003, had quashed the reassessment order.

2. Heard Sri Shambhu Chopra, learned standing Counsel for the Revenue and learned Counsel appearing for respondent assessee.

3. Relying on the provisions of Section 142A of the Act which was inserted by the Finance (No. 2) Act, 2004, with effect from November 14, 1972, the learned standing Counsel submits that the Tribunal committed an error of law in setting aside the reassessment proceedings. According to him, the Assessing Officer was fully justified in taking recourse to the provisions of u/s 147/148 of the Act on the basis of the report on the Departmental Valuation Officer.

4. We have perused the three orders passed by the authorities filed along-with the memo of appeal as also the proviso to Section 142A of the Act which is as under:

Provided that nothing contained in this Section shall apply in respect of an assessment made on or before that 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of Section 153A.

5. We find that in the present case, the reassessment proceedings would be hit by the proviso as it also forms part of Section 142A of the Act, inserted by the Finance (No. 2) Act, 2004, with effect from November 14, 1972. The proviso has been reproduced above. From the reassessment order, we find that the original assessment order was passed on January 14, 1991, that is much before November 28, 2003. It had become final between the parties on the date when Section 142A was inserted by the Finance (No. 2) Act, 2004, as there is nothing on record to show to the contrary.

6. We are, therefore, of the considered opinion that the Tribunal had not committed any error of law in setting aside the reassessment proceedings.

7. The appeals fails and is dismissed on the merits.