(2001) 07 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 61 of 1999

Commissioner of Income Tax APPELLANT

Vs

Hansa Agencies (P.) Ltd. RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:
Income Tax Act, 1961 — Section 125A, 144B, 254

Citation : (2002) 253 ITR 493

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Kishan Singh, for the Appellant; S.C. Nagpal, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The Revenue is aggrieved by the order dated February 26, 1999, passed by the Income Tax Appellate Tribunal by which it has recalled its order of December 23,1997. A few facts as relevant for the decision of this case may be briefly noticed.

2. The dispute relates to the assessment year 1981-82. The assessee which is engaged in the business of export of handicrafts, etc., filed a return declaring an income of Rs. 15,96,650. It filed a revised return showing an income of Rs. 11,50,866. The Income Tax Officer proceeded u/s 144B of the Income Tax Act, 1961. He prepared a draft assessment and forwarded it to the assessee on November 22, 1983. The assessee filed objections on December 2, 1983. A copy of the draft assessment order along with the copy of the objections was forwarded to the Inspecting Assistant Commissioner on December 6, 1983. On May 11, 1984, the Inspecting Assistant Commissioner approved the proposal submitted by the Income Tax Officer. On May 26, 1984, the Assessing Officer passed the order. The income of the assessee was assessed as Rs. 16,99,298.

3. The assessee filed an appeal. One of the grounds raised was that the Income Tax Officer had concurrent jurisdiction with the Inspecting Assistant Commissioner u/s 125A of the Act and, thus, the procedure as laid down u/s

144B of the Act was not required to be followed. The Commissioner of Income Tax accepted the contention and held that the "impugned assessment order dated May 26, 1984, is time barred and hence a nullity in the eye of law". Aggrieved by the order, the Revenue filed an appeal before the Income Tax Appellate Tribunal. The appeal was dismissed. The Revenue then fifed a petition u/s 256(1) of the Act for reference to the High Court. This petition was accepted and a reference was made to the High Court. The Income Tax Reference No. 135 of 1996 Commissioner of Income Tax Vs. Hansa Agencies Private Limited, , was answered in favour of the Revenue vide order dated September 29,1997. Thereafter, the matter was placed before the Tribunal, vide its order dated December 23, 1997, the Tribunal accepted the appeal of the Revenue. The result was that the order of the appellate authority, viz., the Commissioner was set aside. The assessee approached the Tribunal with the request that the matter should be reconsidered. There were other grounds in the case. This petition filed by the respondent-assessee has been accepted by the Tribunal. As a result, the order dated December 23,1997, has been recalled. Aggrieved by the order of the Tribunal, the Revenue has filed the present appeal.

4. Notice was issued to the assessee. Mr. S. C. Nagpal, advocate, has put in appearance.

5. Learned counsel for the parties have been heard.

6. The admitted position is that the assessee had filed an appeal against the order of assessment. The appeal was decided on the short ground of limitation by the Commissioner of Income Tax (Appeals). The Revenue''s appeal was dismissed by the Tribunal. Thereafter, on the issue of limitation, the case was referred to the High Court. The reference was answered in favour of the Revenue. As a result, the Tribunal vide its order dated December 23,1997, has accepted the appeal of the Revenue. Resultantly, the order of the Commissioner by which the assessee''s appeal had been accepted was annulled.

7. The contention of Mr. Nagpal, appearing for the assessee, is that even if the issue of limitation had been decided against the respondent, the appellate authority had to go into the other issues which had been raised. Thus, the Tribunal had erred in accepting the appeal of the Revenue. It should have remanded the case to the appellate authority for a decision on the other issues which may have been raised in the appeal. The miscellaneous application had been filed before the Tribunal only to ensure that the assessee''s appeal was considered and decided on the merits.

8. The contentions raised by counsel appears to be fair. In this situation, we consider it appropriate to direct that the case shall be remanded to the Commissioner of Income Tax (Appeals) for a decision on the grounds, if any, which may have been raised by the assessee in the appeal against the order of assessment.

9. Mr. Sawhney contends that after passing the order on December 23, 1997, the

Tribunal had become functus officio. Since the assessee had not filed any cross appeal, it could not raise any ground to challenge the order of assessment.

10. We are unable to accept this contention. It is the admitted position that the Commissioner of Income Tax had accepted the assessee''s appeal on the ground of limitation. He had not gone into the other facts. In this situation, it would be wholly unjust and unfair if the assessee is denied an opportunity to have its case considered by the appellate authority on the merits. Still further, the assessee having succeeded before the Commissioner of Income Tax, it had no occasion to file any cross appeal for the simple reason that the entire assessment had been annulled. We find that the order of the Tribunal recalling its earlier decision is just and fair.

11. No other point has been raised.

12. In view of the above, the appeal is disposed of with the direction that the assessee''s appeal shall be now considered by the Commissioner of Income Tax (Appeals), Jalandhar, on such other grounds as may have been raised in the appeal while challenging the order of assessment. No costs.