(2007) 08 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

K.D. Prabhakar (HUF) RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Income Tax Act, 1961 — Section 139, 147, 148, 154, 155

Citation : (2007) 213 CTR 178 : (2009) 313 ITR 443

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This order shall dispose of IT Ref. Nos. 23 and 26 of ,2002, which emerge from the common order dt. 26th Nov., 1997, passed in respect of asst. yrs. 1976-77 and 1980-81 The facts are being referred from IT Ref. No. 23 of 2002. The details in respect of the abovementioned references are as under:

Sr. IT Ref Arising out of Asst. year Date of the order of the Tribunal, No. Nos. Amritsar Bench, Amritsar

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1. 23 of 2002. ITA No. 489/Asr/1996 1976-77, 26.11.1997 2. 26 of 2002 ITA No. 493/Asr/1996 1980-81 26.11.1997

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2. At the instance of the Revenue, the income tax-Appellate Tribunal/Amritsar Bench, Amritsar (for brevity,: ''the Tribunal''), has referred the following question of law for the opinion of this Court by exercising jurisdiction u/s 256(1) of the IT Act, 1961 (for brevity, the Act)

Whether on the facts and in the circumstances of the case, the learned Tribunal is right in law in reversing the order of the learned Dy. CIT(A) who upheld the order of the AO passed u/s 154 holding that no mistake was apparent from records insofar as charging of interest u/s 139(8) was concerned, for the asst. yr 1976-77?

3. Facts may briefly be noticed. The assessment in this case was originally completed in respect of the asst yr. 1976-77 on a total income of Rs. 9,990 plus agricultural income of Rs. 400 and in respect of asst. yr. 1980-81 on total income of Rs. 8,240 plus agricultural income of Rs. 700. Subsequently, in the course of assessment for the asst. yr. 1990-91, it came to the notice/of the AO that the assessee had received additional compensation as also interest thereon as a result of the judgment dt. 12th July, 1988 passed, by this Court by granting enhanced compensation and interest on account of compulsory acquisition of the land belonging to the assessee, by the State Government. The assessee filed return of income for the asst. yrs. 1984-85 to 1990-91 disclosing therein interest income as also appropriate amount of capital gain arising out of the said; compulsory acquisition of land The AO sought to assess interest on accrual basis as interest was allowed by this Court right from asst. yr, 1974-75. This exercise was supported by the judgment of Hon''ble the Supreme Court in the case of Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, . However, the assessee, resisted and insisted for reassessment of interest accruing from the asst. yrs. 1984-85 onwards. As a consequence, proceedings u/s 147 of the Act were initiated and notices were served u/s 148 on the assessee on 13th. Jan., 1992 for both the assessment years in addition to others. The assessee filed return, declaring income of Rs. 35,040. plus agricultural income of Rs. 400 in respect of the asst yr. 1976-77 and for the asst. yr. 1980-81 he, filed the return declaring income of Rs. 33,290 plus agricultural income of Rs. 700. Interest u/s 139(8) was also charged at Rs. 2,610 and Rs. 19,764 respectively. Thereafter, the assessee moved an application u/s 154 of the Act asserting therein that the interest was not chargeable "by citing the orders passed in the cases of co-owners. The application was rejected by the AO vide his order dt. 12th Sept., 1995. The assessee challenged the order of the AO before the Deputy Commissioner of Income Tax (Appeals), Jalandhar [Dy. CIT(A)], who dismissed: the appeal vide his order dt. 30th March, 1996.

4. Feeling aggrieved,, the assessee challenged the orders dated 30th March, 1996 passed by the Dy, CIT(A) before the Tribunal. The Tribunal allowed the appeal by placing reliance on a clarification issued by the CBDT as to when the amendment of Expln. 2 appended to Section 139(8) of the Act was to be applied. The clarification in clear terms stated that it was to apply from the asst. yr. 1984-85. The observation of the Tribunal in paras 4 and 5 reads as under:

4. It is quite clear that so far as Section 139(8) is concerned, Expln. 2 was incorporated w.e.f. 1st April, 1985. It is also quite clear where the cases are reopened u/s 147, the CBDT has given clarification regarding the years from which the amendment of Expln. 2 is applicable and accordingly the amendment is applicable from the asst. yr. 1984-85. Similarly regarding charging of interest u/s 215/217, the Section 215(6) related to the assessment u/s 147, the power to charge interest under Sections 216 and 217 is effective from 1st April, 1985 i.e. from asst. yr. 1985-86. The CBDT circular reproduced in (1985) 152 ITR 29, makes it clear that in case assessment is made u/s 147 for the first time then

interest could be charged u/s 215/217 from asst. yr. 1985-86 onwards. Apparently, if facts are so, which appear to be as per statement made by the appellant, before the Dy. CIT(A), then a mistake is apparent from law and as such the AO is bound to rectify charging of interest because it does not give him power to charge interest under Sections 139 and 215/217 for the asst. yrs. 1974-75 to 1982-83 because return has been filed first time in response to show-cause notice u/s 147 of the IT Act. The AO is directed to decide the application of rectification accordingly.

5. The appeals are accepted.

5. Mr. Sanjiv Bansal, learned Counsel for the Revenue has not been able to point out any legal infirmity in the view taken by the Tribunal. It is evident from the impugned order that the Tribunal has placed reliance on Expln. 2 to Section 139(8) of the Act, which was added by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1st April, 1985. It may be pertinent to make a reference to Expln. 2 appended to Section 139(8) of the Act and the same reads as under:

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.

(b) Where as a result of an order u/s 147 or Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, the amount of tax on which interest was payable under this sub-section has been increased or reduced, as the case may be, the interest shall be increased or seduced accordingly, and-

(i) in a case where the interest is increased, the ITO shall serve on the assessee, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice u/s 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

6. The aforementioned, Explanation was added w.e.f. 1st April, 1985 and the circular issued by the CBDT shows that it was to apply in relation to the asst. yr. 1985-86 and subsequently. The relevant part of the circular [No. 397 dt. 16th Oct., 1984-Ed.] issued by the CBDT, as reported in (1985) 152 ITR 29 reads as under:

15.4 Under the existing provisions contained in Clause (b) of Section 139(8), interest payable by an assessee for delay or default in furnishing the return of income is required to be reduced in cases where the tax on which the interest was payable has been reduced as a result of an order under Sections 154, 155, 250, 254, 260, 262 or Section 264 of the Act. This clause has been substituted by a new Clause (b) which provides that where as a result of any of the orders specified in that clause, the amount of tax on which interest was payable has been increased or reduced, the interest shall be increased or reduced, accordingly. In a case where the interest is increased, the ITO shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be issued under s, 156 of the Act and the provisions of the Act shall apply, accordingly. In cases where such interest is reduced, the excess interest paid, if any, shall be refunded to the assesses.

15.5. These amendments take effect from 1st April, 1985, and will, accordingly, apply in relation to the asst. yr. 1985-86 and subsequent years.

7. There is, thus, no doubt left that no notice with respect to the asst. yrs. 1976-77 and 1980-81 could have been issued and the view taken by the Tribunal is unassailable. Accordingly, we uphold the view taken by the Tribunal.

8. In view of the above, the question is answered against the Revenue and in favour of the assessee.