(2000) 11 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Income Tax C. No. 46 of 1998

Commissioner of Income Tax	APPELLANT
Vs	
K.D. Prabhakar	RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:
Income Tax Act, 1961 — Section 139, 139(8), 143, 143(3), 147

Citation : (2001) 249 ITR 299

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant; Sanjay Goyal, for the Respondent

Judgement

G.S. Singhvi, J.—This is a petition u/s 256(2) of the Income Tax Act, 1961, (for short "the 1961 Act"), for directing the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, "the Tribunal") to refer the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal is right in law in reversing the order of the learned Deputy Commissioner of Income Tax (Appeals) who upheld the order of the Assessing Officer passed u/s 154 holding that no mistake was apparent from records in so far as charging of interest u/s 139(8) was concerned, for the assessment year 1975-76 ?"

2. The facts necessary for deciding this petition are that after the Assessing Officer had completed the assessment of the respondent''s income for the year 1974-75, it came to his notice that the respondent-assessee had received additional compensation and interest in pursuance of the judgment dated July 12, 1988, of the High Court in lieu of compulsory acquisition of his land, but the latter had not filed a return for assessment of the capital gain made in the form of interest. Therefore, he issued notice u/s 148 of the 1961 Act for initiation of the proceedings u/s 147 of the 1961 Act. On receipt of the notice, the assessee

furnished a return declaring income at Rs. 36,900 plus agricultural income of Rs. 400 for the relevant assessment year. Thereafter, the Assessing Officer passed an order dated August 19, 1993, u/s 143(3) of the 1961 Act, assessing the total taxable income of the respondent at Rs. 36,900 plus agricultural income of Rs. 400. He also levied interest u/s 139(8) of the Act. The respondent did not challenge that order by filing an appeal within the period of limitation, but after about two years, he filed an application dated July 28, 1995, u/s 154 of the 1961 Act for correction of the so-called error of charging interest u/s 139(8) of the 1961 Act by contending that in the cases of the co-owners, namely, Amrit Lal Prabhakar and Raghunandan Lal Prabhakar, the Commissioner of Income Tax (Appeals) had held that the interest was not chargeable u/s 139(8) of the 1961 Act. The Assessing Officer rejected that application on the ground that the order dated August 19, 1993, did not suffer from any mistake apparent on the face of the record. The Deputy Commissioner of Income Tax (Appeals), Jalandhar dismissed the appeal filed by the respondent, but the Tribunal allowed the second appeal and held that no interest was chargeable u/s 139(8) of the 1961 Act.

3. Shri R. P. Sawhney, senior counsel for the Revenue, invited our attention to the order passed by the Tribunal on the application for reference filed by the respondent u/s 256(1) of the 1961 Act and submitted that I. T. C. No. 113 of 1996-CIT v. Satya Swami, on which reliance has been placed by the Tribunal for declining the Revenue''s request for reference, has no bearing on the question sought in this case and, therefore, this court should direct the Tribunal to refer the aforementioned question to this court. He placed before us a copy of the paper book of I. T. C. No. 113 of 1996, to substantiate his assertion. Learned counsel argued that the Tribunal has gravely erred in holding that the application filed by the respondent u/s 154 of the 1961 Act, was maintainable, because the order passed by the Assessing Officer for levy of interest u/s 139(8) of the 1961 Act did not suffer from any mistake apparent on the face of the record. He then argued that the order passed by the Commissioner of Income Tax (Appeals) in the cases of co-owners could not have been relied upon for entertaining the application filed u/s 154 of the 1961 Act, more so, because no such plea was raised before the Assessing Officer.

4. Learned counsel for the respondent relied on the judgments of this court in Maya Ram Jia Lal Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. Rajesh Talkies, and argued that the question sought by the Revenue cannot be treated as a question of law requiring adjudication by this court.

5. We have considered the respective arguments. In the case of Commissioner of Income Tax Vs. Rajesh Talkies, a Division Bench has held that the decision rendered by the appellate authority in one case cannot be made the basis for declaring that the order passed by the competent authority suffers from a mistake apparent on the face of the record. In view of that position and also the fact that the order passed in I. T. C. No. 113 of 1996-CIT v. Satya Swami, on

which reliance has been placed by the Tribunal for rejecting the petition filed u/s 256(1) of the 1961 Act, does not have any bearing on the question sought by the Revenue, we are convinced that the question framed by the Revenue calls for determination by this court.

6. Hence, the petition is allowed. The Tribunal is directed to refer the abovenoted question to this court and send the statement of the case at an early date for appropriate adjudication by the court.

