(2007) 04 AHC CK 0137

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Krishna Textiles RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 254, 35
Income Tax Act, 1961 — Section 147, 148, 254, 35
Income Tax Act, 1961 — Section 147, 148, 254, 35

Citation : (2009) 315 ITR 271

Hon'ble Judges : Sushil Harkauli, J;Ajai Kumar Singh, J

Bench : Division Bench

Judgement

1. The following question has been referred in this reference:

Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the Income Tax Officer was not justified to intimate proceedings u/s 147(b) of the Act?.

2. It appears from the record that the ITO re-opened the assessments u/s 147 because according to him relief u/s 35(B) has been wrongly allowed in respect of certain expenditure.

3. The law of Section 147/148 is well settled by now. Re-opening is not permitted on a mere change of opinion on part of the assessing authority on the same material which was available at the completion of the original assessment.

4. It has been laid down in a catena of decision that for re-opening the assessment, the Assessing Officer must have "reason to believe" that income has escaped assessment and the ''reason to believe'' must be founded upon some information of fact which was not part of the record on which assessment had been originally completed.

5. Learned Counsel for the department has sought to widen the scope of re-opening the assessment by arguing that re-opening should be allowed where there has been any error in the original assessment which has led to income

escaping assessment. This submission cannot be accepted. It is obvious that if the original assessment had been correct and there was no error, re-opening would be meaning less. It is thus obvious that re-opening of assessment pre-supposes an error in the original assessment. But the restrictions placed upon the precondition for re-opening requires something more than a mere error in the original assessment. It requires that there is some factual material or information which can form the basis of ''reason to believe'' mat income has escaped assessment.

6. Because here was no such material or information, therefore, the case was one where upon a review of the original assessment order, the ITO was of the changed opinion on the same material that some income had escaped assessment. This could not have justified re-opening of assessment.

7. We are not examining the question whether on such facts rectification of error u/s 254 was permissible.

8. Our answer to the question referred is therefore that the Tribunal was legally correct in holding that the ITO was not justified in initiating the proceedings u/s 147(b) on the facts and in the circumstances of the case.

9. Reference is answered as above.