(2007) 08 DEL CK 0206

In the Delhi High Court

Commissioner of Income Tax APPELLANT

Vs

Krishnan Thyagarajan Sivarama RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Citation : (2008) 172 TAXMAN 334

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The revenue is aggrieved by an order dated 12-11-2005 passed by the - Income Tax Appellate Tribunal (Tribunal''), Delhi-XVI, in ITA No. 1211/2005 relevant for the assessment year 2001-02.

2. This appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act)arises out of penalty proceedings. Initially the assessing officer had accepted the return submitted by the assessee but the Commissioner (Appeals) exercised powers u/s 263 of the Act and directed the assessing officer to tax the proceeds of sale of shares as a short-term capital gain as against the long-term capital gain claimed by the assessee.

3. The assessing officer more than followed the directions given by the Commissioner (Appeals) and not only taxed the assessee on short-term capital gains but also imposed a penalty for furnishing inaccurate particulars of income which had led to an inaccurate computation of tax.

4. The assessee had acquired certain shares from Microsoft Corporation, of which he was an employee, through a stock option scheme. Under the scheme, the assessee was granted an option to immediately sell the shares which had vested in him. That option was exercised by the assessee and according to him, the time gap between the vesting of shares and selling them was sufficient to put the differential amount in the category of long-term capital gains, this was initially accepted by the assessing officer.

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5. After imposition of penalty as mentioned above, the Commissioner of Income Tax (Appeals) was of the view that the assessee had furnished all the necessary and relevant particulars and that there was no question of furnishing any inaccurate particulars which led to an erroneous computation of tax. This view of the Commissioner (Appeals) was upheld by the Tribunal.

6. Apart from the fact that there are concurrent findings of two authorities below, we are of the view that the case of the assessee merits acceptance. We find on a perusal of the records of the case that the assessee had made a full disclosure of all the facts as required by the revenue and there was no question of any inaccurate particulars having been furnished by the assessee with a view to gaining any advantage. Consequently, we are of the opinion that no substantial question of law arises.

7. Learned Counsel for the revenue contends that the date of acquisition of shares was not correctly mentioned by the assessee. We find no reason to take different view in the matter particularly when there are concurrent findings arrived at by the authorities below in this regard. It may be noted that even the assessing officer had initially accepted the stand taken by the assessee.

8. Dismissed.

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