
(2008) 04 P&H CK 0006
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

N.S. Bakshi

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Income Tax Act, 1961 — Section 142A, 143

Citation : (2010) 325 ITR 607

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—For the assessment year 1997-98 return declaring an income of Rs. 2,17,650 was processed on 24-5-1999. During the course of assessment proceedings u/s 143(3) of the Act, the assessing officer while computing the valuation of house property referred the case to the DVO for its valuation. On examination of the valuation filed by the assessee, it was found that there was a huge difference of Rs. 17,89,000 on the value of property assessed by the assessee and by the DVO. Hence, an addition of Rs. 17,89,000 was made in the income of the assessee for the assessment year 1997-98.

2. Aggrieved against the order of the assessing officer, the respondent filed an appeal before the Commissioner of income tax(A)-II, Ludhiana (hereinafter referred to as the "Commissioner (Appeals)-II, Ludhiana"), who vide his order dated 28-11-2002, has deleted the addition.

3. Not satisfied with the order of Commissioner (Appeals)-II, Ludhiana, the revenue filed an appeal before the Tribunal, which was dismissed vide order dated 7-10-2005. The operative part of the order is reproduced:

It is evident from Section 142A quoted above that whereas the Section has been incorporated retrospectively, with effect from 15-11-1972, by the Finance (No. 2) Act, 2004, it has been specifically provided that nothing contained in this Section shall apply in respect of an assessment made on or before the 30-9-2004, and

where such assessment has become final and conclusive on or before that date. In this case, the assessment was made earlier than 30-9-2004, and reopening of the assessment prior to 30-9-2004, on the basis of DVO's report would also not be justified. We are, therefore, of the view that the controversy on merits of the addition is unnecessary. We accordingly find no justification to interfere with the order of Commissioner (Appeals). The appeal of the revenue is accordingly dismissed.

4. However, after preliminary hearing, this court issued notice to assessee on the following substantial question of law:

Whether in the law and on the facts of the case, the Tribunal was correct in holding that assessing officer was not empowered to refer the case to the DVO and the interpretation of Section 142A of the Income Tax Act was justified?

5. Shri Sanjiv Bansal, Advocate for the appellant revenue has vehemently argued that the Tribunal has erred in law in disallowing the departmental appeal by relying upon the decision in the case of *Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong*, and has not properly interpreted the provisions of Section 142A of the Act. According to the learned Counsel for the revenue, Section 142A of the Act has been inserted with retrospective effect i.e., with effect from 15-11-1972, and the assessing officer has always power to make a reference to the Valuation Officer, so the decision of Tribunal does not appear to be passed on the correct appreciation of facts of the case and, therefore, the question of law as raised by him, does arise from the order of the Tribunal.

6. On the other hand, Mr. Puneet Gupta, advocate, Counsel for the respondent-assessee has argued that the question of law raised by the revenue has actually no effect on the decision of the case and is purely academic in nature because even if the question of law as raised by the revenue is answered in favour of the department even then in view of the pure finding of fact recorded by the Tribunal in the impugned order, this appeal is liable to be dismissed.

7. We have heard learned Counsel for the parties and perused the record. From the perusal of the record, the Commissioner (Appeals)-II, Ludhiana, found that the report of the Valuation Officer is not reliable and the addition made on the basis of valuation were deleted. The revenue has not challenged the said finding of fact before the Tribunal. When the attention of Mr. Sanjiv Bansal, advocate for the "Revenue was drawn towards this point, he could not controvert. In view of this undisputed fact, we do not deem it necessary to answer the question of law as raised by the revenue in the present appeal, being of no consequence.

8. In view of the finding of fact, we are not inclined to interfere in the impugned order passed by the Tribunal. The appeal being without any merit, is dismissed.