(2006) 03 MP CK 0138

In the Madhya Pradesh High Court

Commissioner of Income Tax APPELLANT

Vs

Pankaj Kumar Jain RESPONDENT

Date of Decision : 29-03-2006

Acts Referred:
Income Tax Act, 1961 — Section 132, 158BB

Citation : (2007) 294 ITR 331

Hon'ble Judges : S.K. Kulshrestha, J;Ashok Kumar Tiwari, J

Bench : Division Bench

Judgement

1. The appellant, Commissioner of Income Tax, has filed this appeal against the order of the Income Tax Appellate Tribunal in I. T. (SS) No. 18/ IND/2001, dated 26-2-2003, for the block period 1989-90 to 1999-2000. The appeal has been admitted on the following substantial question of law:

Whether the Income Tax Appellate Tribunal erred in upholding the deletion of Rs. 1,91,550 made by the Commissioner of income tax(Appeals) in view of Section 158BB(l)(ca) of the Income Tax Act, in the facts and circumstances of the case ?

The facts giving rise to the above question are that in the search and seizure carried out u/s 132 of the Income Tax Act, 1961, in the premises of the maternal uncle of the assessee, gold and jewellery of the value of Rs. 2,21,710 and silver jewellery of the value of Rs. 18,79,692 total Rs. 21,01,402 was found and was seized. During this period the assessee had filed a return showing his income as nil. Accordingly, the assessing officer assessed the undisclosed income at Rs. 1,91,550 as the assessee did not furnish returns of income for the assessment years covered under the block period. The assessee disputed the assessment before the Commissioner (Appeals)-I, Indore, who by his order dated 21-4-2001, in Appeal No. I. T. 262/2000-01/55, deleted the undisclosed income assessed by the assessing officer. While allowing the appeal, the Commissioner (Appeals) relied on the decision of the Income Tax Appellate Tribunal, Indore Bench, in the case of Ramesh Kothari v. ACIT in Appeal No. I. T. (SS)/62/IND/1997 dated 11-12-2000. The appellant''s appeal to the Income Tax Appellate Tribunal against the decision of the Commissioner (Appeals) was dismissed. It is against this decision of the Income Tax Appellate Tribunal that the present appeal has been filed which has been admitted on the question stated above.

2. Learned Counsel for the department submits that Section 158BB(1)(c) has been amended by the Finance Act, 2002, with retrospective effect from 1-7-1995, and a new Clause (ca) has been inserted, which reads as under:

158BB.(1) The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the assessing officer and relatable to such evidence, as reduced by the aggregate of the total income, or, as the case may be, as increased by the aggregate of the losses of such previous years, determined....

(ca) where the due date for filing a return of income has expired, but no return of income has been filed, as nil, in cases not falling under Clause (c).

3. The contention of learned senior counsel, therefore, is that the credit given for a sum of Rs. 1,91,550 for an amount of income below the taxable limit during the block period could not have been given unless the return had been filed during this period. Reliance has also been placed on a recent judgment of this Court in Dr. Brijesh Lahoti Vs. Commissioner of Income Tax and Others, , in which the question whether the income amounting to Rs. 44,800 of the assessee was undisclosed income in the hands of the assessee was answered against the assessee in the facts and circumstances of the case, as the same was not disclosed to the department before the date of the search.

4. The question raised by the appellant before us is with reference to the applicability of Section 158BB(l)(ca). Though the said provision was inserted retrospectively with effect from 1-7-1995, the amendments/substitution was made by the Finance Act, 2002. It is, therefore, clear that prior to the year 2002, the provision was not on the statute book and it was brought on the statute book in that year only, though with retrospective effect from 1-7-1995. In the case in hand, the order passed by the Commissioner (Appeals), Indore, is dated 20-4-2001, and apparently, the said provision being not in existence, there was no occasion for the Commissioner (Appeals) to examine whether credit could be given or not for the said sum of Rs. 1,91,550 in view of the provisions of Clause (ca). Under these circumstances, the credit given on the assumption that the amount represented the income below the taxable limit for which it was not necessary to file return, did not suffer from any infirmity or illegality. The Income Tax Appellate Tribunal has upheld the deletion made by the Commissioner (Appeals). In the facts and circumstances of the present case, therefore, it is manifest that though retrospective, the provisions of Section 158BB(1)(ca) not being on the statute book, could not be invoked by the department to deny the

benefit otherwise available to the assessee for which assessment was concluded before the date of the amendment and even the appeal. The question is therefore, answered against the department and in favour of the assessee. There shall be no order as to costs of this appeal.