(2008) 09 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Paras Rice Mills RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Constitution of India, 1950 — Article 323
Income Tax Act, 1961 — Section 132, 132A, 158BC, 253, 260A

Citation : (2008) 220 CTR 619 : (2009) 313 ITR 182 : (2009) 176 TAXMAN 181

Hon'ble Judges : Ajay Tewari, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Revenue has preferred this appeal u/s 260A of the IT Act, 1961 (for short, "the Act"), against the order of the Tribunal (Chandigarh ''B'' Bench), dt. 7th Oct., 2003 passed In IT(SS) No. 1118/Chd/1996 for the asst. yrs. 1986-87 to 1996-97.

2. On 26th Sept., 1995, search and seizure action u/s 132(1) of the Act was carried out at the business premises of the assessee and assessment u/s 158BC was completed. The assessee preferred an appeal and also raised additional grounds against validity of search. The Tribunal held that search and seizure was illegal as no material was produced before the Tribunal to show that the requirements of Section 132(1) of the Act were complied with.

3. Though initially, number of questions of law were sought to be raised, but In view of order dt. 28th July, 2008, of this Court, the matter is required to be considered with respect to questions (a) and (b), which are as under:

(a) Whether on the facts and In the circumstances of the case, the Tribunal was right in law in deciding to go into the validity of the action taken u/s 132(1) of the IT Act. 1961.

(b) Whether the Tribunal was right In law to permit the assessee to enlarge the scope, ambit and complexion of the appeal In the garb of raising additional grounds, specifically when such grounds do not fall within the scope of Section 253 of the IT Act, since this issue had not been raised before the assessing authority the same could not be taken before the appellate authority, and that too, when no specific appeal is provided in the Act.

4. Learned Counsel for the Revenue does not dispute that against raising of additional grounds, an appeal, being ITA No. 129 of 2002 was preferred before this Court, which was dismissed on 16th June, 2003.

5. In view of this development question No. (b) does not survive.

6. As regards question No. (a), learned Counsel for the Revenue relies upon judgments of Delhi High Court In Virinder Bhatia vs. Deputy Commissioner of Income Tax, (2011) 79 ITD 340, sic-this should be M.B. Lal Vs. Commissioner of Income Tax, and judgment of Madhya Pradesh High Court in (2005) 97 ITD 333 .

7. Learned Counsel for the assessee relies upon contra judgment of Rajasthan High Court in CIT v. Smt. Chitra Devi Soni (2008) 1 DTR 98 (Raj) and also a judgment of this High Court in CIT v. Raj Kumar Gupta IT Appeal No. 50 of 2002 passed on 21st Aug., 2003.

8. We have given due consideration to the issue involved.

We are in agreement with the view taken by the Delhi High Court in Virinder Bhatia (supra) and Madhya Pradesh High Court in Gaya Prasad Pathak (supra). For the same reason, we respectfully disagree with the view taken by the Rajasthan High Court in Smt. Chitra Devi (supra). Judgment of this Court in Raj Kumar Gupta (supra) does not deal with the issue of scope of assessing authority to go into question of validity of search.

9. In the judgment of Delhi High Court in M.B. Lal Vs. Commissioner of Income Tax, , it was observed:

It was, in the light of the above, no longer open to the petitioner to reagitate the question of validity of the authorization and legality of the search proceedings either before the CIT or before the Tribunal for that matter. The question of validity or otherwise of the search proceedings stood concluded by the judgment of this Court dt. 6th May, 2002, in the writ petition mentioned above....

10. In Gaya Prasad Pathak (supra), it was observed:

In our considered opinion, the jurisdiction exercised by the statutory authority while hearing the appeal cannot enter into the justifiability of an action u/s 132A of the Act. To elaborate: whether the order passed by the CIT is without jurisdiction or not cannot be the subject-matter of assessment as the same does not arise in the course of assessment. Therefore, neither the AO nor the appellate authority can dwell upon the said facet. We may note with profit, it would not be a jurisdictional fact within the parameters of assessment proceeding or an appeal arising therefrom. It can only partake of the nature and character of adjudicatory fact to the limited extent whether such search and seizure had taken place and what has been found during the search and seizure. The validity of search and seizure in and, therefore, the same cannot be dwelled upon or delved into in an appeal. The submission of Mr. Nema that the Tribunal having been constituted under Article 323 of the Constitution can delve into, we are disposed to think, is an unacceptable proposition of law especially in the teeth of the provision contained u/s 253 of the Act.

11. We are of the view that the Tribunal when hearing an appeal against the order of assessment, could not go into the question of validity or otherwise of any administrative decision for conducting search and seizure. The same may be subject-matter of challenge in independent proceedings where question of validity or otherwise of administrative order could be gone into. The appellate authority was concerned with the correctness or otherwise of the assessment.

12. For the above reasons, we answer the question (a) in favour of the Revenue and against the assessee.

13. The assessee has also filed cross-objections.

14. As regards the judgment of this Court in Raj Kumar Gupta (supra), there was no discussion on the issue of power of appellate authority to go into the question of validity of search.

15. In support of cross-objections, learned Counsel for the assessee submitted that search and seizure operations having been found to be invalid, the Tribunal should have given full effect to the said finding. In view of our above finding, this contention does (sic-not) survive.

Accordingly, appeal of the Revenue is allowed in above terms and cross-objection of the assessee is dismissed.

