

(2003) 02 RAJ CK 0029
In the Rajasthan High Court
Case No : IT Appeal No. 40 of 2002

Commissioner of Income Tax

APPELLANT

Vs

Parmeshwar Bohra

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Income Tax Act, 1961 — Section 263, 69

Citation : (2003) 184 CTR 388 : (2004) 267 ITR 698

Hon'ble Judges : Prakash Tatia, J;M.R. Calla, J

Bench : Division Bench

Advocate : Sundeep Bhandawat, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—This IT Appeal is directed against the order dt. 13th Dec., 2001, passed by the Tribunal, Jodhpur in ITA No. 486/Jdpr/1999 for the asst. yr. 1993-94.

2. Brief facts of the case are that the assessee-respondent is having two business concerns, namely, P.G. Marble Trading Co., Kelwa and Asian Marble and Asbestos at Rajsamand. IT assessment of the respondent was completed u/s 143(3)/148 of the Income Tax Act, 1961 (for the short "the Act of 1961") by order, dt. 24th Sept., 1997, passed by the AO (Annexure-1). The CIT opined that the order passed by the AO was erroneous and prejudicial to the interest of the Revenue and by exercising power u/s 263 by order dt. 31st Aug., 1999, held that opening balance in capital account in Asian Marbles and Asbestos, as on 1st April, 1992, shown by assessee at Rs, 2,73,500 represented assessee's income from undisclosed sources and was taxable in the asst. yr. 1993-94 in the absence of any proof regarding its accommodation in the earlier years. Copy of the order of the CIT, u/s 263, dt. 31st Aug., 1999, is Annexure-2. The assessee aggrieved against the order of the CIT, preferred second appeal before the Tribunal, Jodhpur, Bench Jodhpur which was registered as ITA No. 486(Jdpr)/1999. The Tribunal allowed the appeal by order dt, 13th Dec., 2001.

3. This Court by order dt. 8th July, 2002, found that the following substantial question of law arises for consideration in this appeal :

"Whether on the facts and circumstances of the case, the Tribunal was justified in quashing the order of the CIT(A) dt. 31st Aug., 1999, u/s 263 of the Act without appreciating the fact that in view of Section 69 of the IT Act even in a case where an amount is credited on the very first day of the account year and the explanation offered by the assessee is not accepted, such amount may be assessed as income of the assessee in the account year for which the books were maintained."

4. During the course of assessment proceedings for the accounting year 1992-93, it came to the notice of the assessing authority that opening capital in the case of Asian Marbles and Asbestos which is as said, a branch of P.G. Marbles was shown at Rs. 2,73,500 as on 1st April, 1992. It was found by the CIT that the assessing authority while completing the reassessment for the year 1993-94 altogether omitted to consider this issue of capital shown as Rs. 2,73,500 on 1st April, 1992, and passed the order of reassessment on 24th Sept., 1997. The CIT, after hearing the representative of the assessee, by order dt. 24th Sept., 1997, held that the opening balance of capital account in Asian Marbles and Asbestos as on 1st April, 1992, shown by the assessee as Rs. 2,73,500 represents the assessee's income from undisclosed sources and that is taxable for the asst. yr. 1993-94.

5. The Tribunal, Jodhpur in appeal, 1999ITA 486(Jdpr) for the asst. yr. 1993-94 filed by the respondent, held that it is a case of unexplained investment u/s 69 of the Act and the appropriate previous year for inclusion is the relevant financial year, therefore, the opening capital cannot be added as an unexplained investment u/s 69 of the Act for the asst. yr. 1993-94. The Tribunal also held that the genuineness of the capital introduction has already been adjudicated upon by the assessing authority for the financial year 1992-93 (sic), therefore, the order of the assessing authority dt. 24th Sept., 1997, does not suffer from any error and is not prejudicial to the interest of the Revenue. The Tribunal also observed that the order passed by the assessing authority for the asst. yr. 1993-94 on the basis of the notice u/s 148 dt. 17th June, 1997, has already been quashed by the order of the Tribunal dt. 6th Dec., 2001, in ITA No. 71/(Jdpr)/1999 and, ultimately, held that since the assessment order has been quashed, therefore, the order passed by the CIT u/s 263 of the Act of 1961 is also quashed.

6. The learned counsel for the appellant submitted that the assessee has always submitted return without furnishing capital accounts and the income was always assessed on estimate and it is held by the Calcutta High Court in the case of Commissioner of Income Tax Vs. Ashok Timber Industries, that when an amount is credited in the books of the assessee on the very first day of the accounting year and the explanation offered by the assessee is not accepted, such amount is assessable as the income of the assessee of the accounting year for which the books are maintained.

7. It appears that the Tribunal has considered the issue regarding accessibility of the capital while considering the assessee's appeal 1999 ITA 71(Jdpr) for the asst. yr. 1993-94 by order dt. 6th Dec., 2001, whereby the Tribunal held that it is not a case of introduction of cash credit but it is a case of unexplained investment u/s 69 of the Act of 1961 and the appropriate previous year for inclusion is the relevant financial year and, therefore, the opening capital account cannot be added as an unexplained investment u/s 69 of the Act of 1961 for the asst. yr. 1993-94. The Tribunal also held that the genuineness of the capital introduction has already been adjudicated upon by the assessing authority for the appropriate financial year relevant to asst. yr. 1992-93. The Tribunal also took note of the fact that the order passed by the assessing authority for the asst. yr. 1993-94 on the basis of notice u/s 148 dt. 17th June, 1997, has already been quashed by the order dt. 6th Dec., 2001, in the same ITA No. 71(Jdpr)/1999. Therefore, on the basis of the above decision dt. 6th Dec., 2001, the appeal of the assessee was allowed by the Tribunal. Nothing has come on record what happened to the order dt. 6th Dec., 2001, and whether the said order of the Tribunal was ever challenged by the Revenue or not. When the Revenue itself has accepted the order dt. 6th Dec., 2001 wherein it has been held by the Tribunal that it is a case of unexplained investment u/s 69 of the Act of 1961 and the appropriate previous year for inclusion is the relevant financial year and its genuineness has already been adjudicated upon by the assessing authority for the appropriate financial year, i.e., 1992-93 (sic) then how the order of the assessing authority can be said to be erroneous or prejudicial to the interest of the Revenue. Since the Tribunal has decided the appeal on the basis of the decision dt. 6th Dec., 2001, therefore, there appears to be no illegality in the order passed by the Tribunal.

8. The judgment relied upon by the learned counsel for the appellant delivered in the case of CIT v. Ashok Timber Industries (supra) has no application to the facts of this case because of the reason that the genuineness of the capital introduction in this case has already been adjudicated by the assessing authority for appropriate financial year i.e., 1992-93, therefore, it cannot be said to be unexplained investment after order passed by the assessing authority holding genuine capital introduction for the asst. yr. 1992-93.

9. In view of the reasons mentioned above, it is held that the Tribunal was justified in quashing the order of the CIT, Udaipur dt. 31st Aug., 1999 passed u/s 263 of the Act of 1961. The question is answered accordingly.

10. The appeal is, therefore, dismissed.