
(2007) 08 P&H CK 0066
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Rohtas

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Income Tax Act, 1961 — Section 142, 143, 148, 260A, 54B

Citation : (2007) 212 CTR 495 : (2009) 311 ITR 460

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The Revenue has approached this Court by invoking the appellate jurisdiction u/s 260A of the IT Act, 1961 (for brevity "the Act") and has challenged order dt. 29th Sept., 2004 passed by the Tribunal, New Delhi "A" Bench, Delhi passed in ITA No. 200/Del/2004 for the asst. yr. 1996-97. The Revenue has claimed that the following substantial question of law would arise:

Whether the Hon'ble Tribunal was right in law in holding that the assessment framed in the status of HUF by the AO as null and void, though the assessee himself admitted during the assessment proceedings that the land sold by him on which consideration was received and was declared in the return of income as capital gain, belonged to HUF?

2. Facts in brief may first be noticed. The assessee had sold agricultural land in the year relevant to the asst. yr. 1996-97. The assessee did not file the return. The income from the sale of land was assessable to tax for the asst. yr. 1996-97 under the head capital gain. Accordingly, notice u/s 148 of the Act was issued to the assessee on 12th Jan., 2004.

3. He filed his return in the status of "individual" declaring his net income of Rs. 8,50,981. The assessee in the computation of income enclosed with the return, declared the gross capital gain at Rs. 84,13,988 and after claiming deduction u/s 54B and Section 54F of the Act at Rs. 61,96,375 and Rs. 15,03,000 respectively,

net capital gain was worked out at Rs. 7,14,613. The assessment u/s 143(3) of the Act was completed by the AO on 14th March, 2002 by treating the status of the assessee to be HUF and the net income from the long-term capital gain was assessed at Rs. 69,10,988. Accordingly, the AO, while assessing the income under the head capital gain did not allow the deduction u/s 54B of the Act which could have amounted to Rs. 61,96,375 as per the claim made by the assessee. However, the deduction was not allowable to the assessee in the status of HUF. The assessee felt aggrieved with the assessment order and challenged the same before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The appeal was dismissed by the CIT(A) holding that the AO was justified in treating the status of the assessee as "HUF" as against "individual".

3. On further appeal to the Tribunal, it was held that the assessment framed by the AO was null and void because notice dt. 12th Jan., 2004 issued to the assessee u/s 148 of the Act was without intimating his status to be HUF. The operative part of the order passed by the Tribunal reads as under:

Having considered the rival submissions and from a careful perusal of the record and judgments referred to by the parties, we find that admittedly the notice u/s 148 and other notices under Sections 143(2) and 142(1) of the IT Act, 1961 were issued upon the assessee in the status of an individual. During the course of hearing, the learned Counsel for the assessee has also invited our attention to the reasons recorded and from its perusal it appears that the reasons were also recorded in the case of assessee-individual. In response to notice u/s 148 return was also filed in the status of an individual. We have also carefully examined the impugned letter dt. 14th March, 2002 on which the Revenue has placed heavy reliance and we find through this letter the assessee has categorically stated that the land was acquired through a Court decree, therefore, the status is shown as individual.

4. We have heard learned Counsel for the parties and find that firm findings of fact have been recorded by the Tribunal holding that the assessee did not make any statement about the status of HUF in the letter dt. 14th March, 2002 on which the AO had placed heavy reliance. It has further been found that notice u/s 148 and other notice under Sections 143(2) and 142(1) of the Act were issued upon the assessee by presuming his status as "individual". The Tribunal has also referred to the reasons recorded for issuance of notice which led to the conclusion that the notices were issued by treating the assessee as "individual". The return u/s 148 of the Act was also filed in the status of "individual". In the teeth of the aforementioned finding necessary legal consequences are bound to follow namely that once a notice u/s 148 and other sections were issued by treating the assessee as individual then the AO could not have framed the assessment by treating the income in the hands of HUF. We are fortified in our view by the judgment of Hon"ble the Supreme Court in the case of Commissioner of Income Tax Andhra Pradesh Vs. K. Adinarayan Murty, . Therefore, we do not find that any question of law much less a substantial

question of law would arise for our determination.

For the reasons aforementioned this appeal fails and the same is dismissed.