(2009) 11 SHI CK 0063

In the High Court Of Himachal Pradesh

Commissioner of Income Tax APPELLANT

Vs

Sandeep Khanna RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:
Income Tax Act, 1961 — Section 139(8), 154, 154(3), 155, 155(4)

Citation : (2009) 11 SHI CK 0063

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—By means of this Income Tax Reference, the following questions have been referred for the opinion of this Court:

i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in coming to the conclusion that in revision order passed u/s 154/155, for charging interest u/s 139(8) & 215 the application of the provisions of Section 154(3) are mandatory, when in notice issued u/s 154/155 it has been specifically made clear that the enhancement of income will also increase the assessee''s liability.

ii) Whether on the facts and in the circumstances of the case, the ITAT was justified in law in entertaining the assessee''s appeal against charging of interest u/s 139(8) & 215 in order passed u/s 154, when the assessee had not challenged the enhancement of income which has made assessee liable to pay interest.

2. It would be pertinent to mention that the assessee is a partner in the firm M/s. Kailash Nath & Associates, New Delhi. His assessment u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the ''Act'') was provisionally completed by taking into consideration the share from the two firms subject to rectification u/s 154/155 of the Act on completion of assessment of the said firms. Subsequently the assessing officer with a view to take into consideration the share of the assessee''s income from the firms issued notices to the assessee on 9.8.1991 u/s 154/155 and after obtaining no objection of the assessee, fresh

assessment was framed on 4.9.1991 adding the difference to the already assessed income. Interest was also levied under Sections 139(8) and 215/217 of the Act.

3. The assessee was only aggrieved by the levy of interest and aggrieved by the same filed an appeal before the Commissioner of Income Tax (Appeals) Shimla. He challenged the levy of interest on the ground that the same was not chargeable without issuance of notice. The Commissioner allowed the appeal of the assessee and held that the assessing officer was not justified in charging interest and the same was ordered to be deleted.

4. The revenue filed an appeal before the Income Tax Appellate Tribunal, Chandigarh. There was a difference of opinion between the Members of the ITAT and the matter was referred to a Third Member and by majority the order of the CIT(Appeals) was upheld. Against this order, the revenue sought reference and the questions aforesaid have been referred for the decision of this Court.

5. It would also be pertinent to mention here that other appeals/references arising out of the same order have been disposed of by a detailed judgment passed by another Division Bench of this Court in ITA Nos. 8, 9, 12 and 14 of 1999 decided on 17th June, 2008. The said Division Bench, following the judgment of the Apex Court in Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, held as follows:

The Court further observed that before the revisional jurisdiction of the Commissioner Income tax could be invoked it is necessary for the assessee to demonstrate before the Income Tax Officer that there is a case for waiving or reducing the levy of interest. The Court has further held that in cases where the jurisdictional fact attracting the levy is not disputed, it is merely a question satisfying the relevant authority that there are circumstances calling for a reduction or waiver of interest. If an opportunity to do so has not been made available to the assessee before the order levying interest is made, it will be open to the assessee to apply to the Income Tax Officer after such order has been made to show that a reduction or waiver of interest is justified. Admittedly, in the present case the assessee did not exercise his right u/s 155(4) of the Act.

In view of the aforesaid discussion and the observations made by the Apex Court, the assessee''s appeal was not maintainable as the same was filed only against the levy of interest payable u/s 215 pursuant to the orders passed under Sections 154/155 of the Act. The question of law No. 2 is answered accordingly.

6. In view of the law laid down by this Court, question No. 2 referred to us is answered in favour of the revenue and against the assessee. Question No. 1 has, therefore, become redundant. The reference is disposed of in the aforesaid terms. The Registrar General of this Court is directed to send a copy of this judgement to the Income Tax

7. Appellate Tribunal, Chandigarh Bench.

