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(1986) 10 RAJ CK 0038

In the Rajasthan High Court

Case No : Income Tax Reference No. 227 of 1985

Commissioner of Income Tax APPELLANT

Vs

Sardar Kehar Singh RESPONDENT

Date of Decision : 15-10-1986

Acts Referred:
Income Tax Act, 1961 — Section 147, 148, 256(2)

Citation : (1987) 59 CTR 138 : (1987) 167 ITR 556 : (1987) 31 TAXMAN 324

Hon'ble Judges : J.S. Verma, C.J;Pana Chand Jain, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; N.M. Ranka, for the Respondent

Judgement

J.S. Verma, C.J.—This is an application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by the Revenue for a direction to the Income Tax Appellate Tribunal, Jaipur, to state the case and refer to this court for its decision the following question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provisions of Section 147(b) of the Income Tax Act, 1961, could not be invoked in this case ? "

2. The relevant assessment year is 1974-75. The assesses constructed a house at Chandigarh. The construction of that house was commenced in the year 1968 and it had continued up to the assessment year 1976-77. The assessee showed investment in construction of that house up to the assessment year 1973-74, but not during the relevant assessment year 1974-75. The Income Tax Officer reopened the original assessment made for this assessment year by issuing a notice u/s 147(a) read with Section 148 of the Act. Reassessment was made thereafter by making an addition of Rs. 3,14,907 during this assessment year. Similar action was taken by the Income Tax Officer in respect of the subsequent year 1975-76 for which an addition of Rs. 70,670 was made in the reassessment order.

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3. Aggrieved by the decision of the Income Tax Officer, the assessee appealed to the Commissioner of Income Tax (Appeals). The appeal was allowed and the objection of the assessee was upheld cancelling the reassessment order made by the Income Tax Officer. Thereafter, the Tribunal has rejected the Revenue''s appeal and also rejected the application made for a reference u/s 256(1) of the Act. Hence, this application by the Revenue.

4. The only question for our decision is, whether the above-quoted question of law arises for decision out of the Tribunal''s order. It is not disputed that the Revenue''s case throughout was that the reassessment could be made under Clause (a) of Section 147 read with Section 148 of the Act. That contention was rejected and the above-quoted question does not relate to Clause (a) of Section 147. Before the Tribunal, an alternative argument was advanced by the Revenue, for the first time, based on Clause (b) of Section 147 of the Act. The Tribunal pointed out that such a contention could not be permitted for the first time at that stage. However, even on merits, this contention was rejected by the Tribunal.

5. In our opinion, this application has to be dismissed. It is not a case where the facts on which notice for reassessment was given attracted not only Clause (a) but also Clause (b) of Section 147 of the Act. The basis on which Clause (b) is attempted to be relied on by the Revenue at this belated stage was not even communicated to the assessee while reopening the assessment. This alone is sufficient to indicate that this question based on Clause (b) of Section 147 of the Act does not really arise for decision, out of the Tribunal''s order.

6. The application is rejected. No costs.

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