(2014) 01 KAR CK 0117

In the Karnataka High Court

Case No : Income Tax Appeal Nos. 497 and 500 of 2007

Commissioner of Income Tax APPELLANT

Vs

Shobha Developers P. Ltd. RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 145(2)

Citation : (2014) 369 ITR 66

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : Jeevan J. Neeralgi, Advocate for K.V. Aravind, Advocate for the Appellant; A. Shankar and M. Lava, Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—These income-tax appeals are directed against the common judgment and order dated February 2, 2007, rendered by the Income-tax Appellate Tribunal, Bangalore Bench "A" (for short "the Tribunal"). The Tribunal dismissed the appeals, bearing I.T.A. Nos. 362 and 363 of 2005, pertaining to the assessment years 2001-02 and 2002-03, filed by the Revenue. The appeals/ before the Tribunal, were directed against the order of the Commissioner of Income-tax (Appeals-III), Bangalore (for short "the appellate authority") dated December 31, 2004, in I.T.A. Nos. 85 and 86 of 2003-04. The appellate authority, partly allowed the appeals filed by the assessee, which were directed against the assessment order dated September 29, 2003, under section 143(3) of the Income-tax Act, 1961 (for short "the Act"). By that order, the Assessing Officer added Rs. 48,07,460 and Rs. 42,04,831 to the income of the assessee for the assessment years 2001-02 and 2002-03, respectively. It is against this backdrop, learned counsel appearing for the Revenue, after inviting our attention to section 145(2) of the Act and a notification issued thereunder bearing No. S.O. 69(E), dated January 25, 1996 (see [1996] 218 ITR (St.) 1), submitted that neither the Tribunal nor the appellate authority looked into the said notification and considered its effect on the facts of the present case and have simply relied on the judgment of this court in the case of CIT v. Khoday Distilleries Ltd. in ITRC

Nos. 19, 20 and 21 of 1993, decided on September 12, 1995, and held that the issue raised in the instant case is squarely covered by the said judgment. The Tribunal further observed that the appellate authority was justified in adopting the "completed contract method" for computing the income. He submitted that neither the Tribunal nor the appellate authority entered into the merits of the case to find out whether the findings recorded by the Assessing Officer are correct. He further submitted that the effect of the notification dated January 25, 1996, was also not taken into consideration, which was issued after the judgment of this court in Khoday Distilleries'' case.

2. Having confronted with this Mr. Shankar, learned counsel appearing for the assessee, though did not oppose the prayer for remand of the matter to the Tribunal, submitted that the Tribunal may be directed to consider whether the income determined by the Assessing Officer on account of increase in work-in-progress is permitted in law and that whether the notification has application to the facts of the present case.

3. We have perused the order of the Tribunal. The Tribunal, while dismissing the appeals filed by the Revenue, simply placed reliance upon the judgment of Khoday Distilleries'' case to hold that the present case is squarely covered by the said judgment without entering into the merits of the case and/or considering the findings recorded by the Assessing Officer. It further appears from the judgment of the Tribunal and so also, the appellate authority that both lost sight of the fact that the notification dated January 25, 1996, issued under section 145(2) of the Act was not in the field when the judgment in Khoday Distilleries'' case was delivered on September 12, 1995. They have also not considered the effect of the notification on the facts of the present case. It is in this backdrop when we expressed that we are inclined to allow these appeals and remand the matters to the Tribunal for its consideration afresh, both the learned counsel for the parties have agreed for the following order:

(a) The judgment and order dated February 2, 2007, is set aside and I.T.A. Nos. 362 and 363 of 2005 are restored to the file.

(b) The Tribunal shall deal with these appeals afresh on the merits in accordance with law keeping in view the observations made in this order. It is, however, made clear that we have not expressed any opinion on the merits of the case.

(c) All contentions are left open.

(d) The Tribunal, while dealing with the appeals, as aforementioned, shall keep in view the notification dated January 25, 1996, and consider whether that has any effect on the facts of the present case. It may also consider the submission of the learned counsel appearing for the assessee, as recorded in the order.

With these observations, we dispose of these appeals. We hope and trust that the Tribunal shall deal with the appeals and decide the same as expeditiously as possible and preferably within a period of six months from the date of receipt of this order.

