

(2008) 08 DEL CK 0202
In the Delhi High Court
Case No : IT Appeal No. 982 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Smt. Ram Devi

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Income Tax Act, 1961 — Section 158BB

Citation : (2010) 326 ITR 421 : (2009) 176 TAXMAN 113

Hon'ble Judges : Rajiv Shakhder, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : J.R. Goel, for the Appellant; Rakesh Gupta, T.R. Talwar and Poonam Ahuja, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This appeal has been preferred against the order of the Tribunal dated 16-3-2007 in respect of the block period 1987-88 to 1997-98. By virtue of the order dated 12-10-2007, the predecessor Bench had issued notice to the respondent limited to question No. (c) mentioned in the memo of appeal. We are, therefore, limiting ourselves to that question alone. The said question relates to the issue of whether the Tribunal was correct in accepting the additional agricultural income of the assessee by relying on post search facts, and ignoring the fact that the additional agricultural income already formed part of the undisclosed income u/s 158BB of the Income Tax Act, 1961.

2. This issue has been raised in the context of two orchards belonging to the assessee; one at Surath (Mandi) and the other at Kullu, both of which are in Himachal Pradesh. It is an admitted position that the assessee has various fruit bearing trees in the said orchards. The fruits that are produced in the said orchards are apples, pears, cherries, almonds and pecan nuts. This case has had two rounds before the Tribunal. In the first round, the Tribunal came to the conclusion that the agricultural income from the orchard at Surath (Mandi) had been disclosed by the assessee in respect of the assessment year 1991-92. The Tribunal also noted from the observations of the Assessing Officer that no income

from agriculture was declared/shown in respect of the other orchard, i.e., the orchard at Kullu. The Tribunal, therefore, held that there was agricultural income during the block period from these two orchards, which was not shown by the assessee fully. Consequently, the Tribunal gave the following directions:

However, we are of the view that to ascertain that how much agricultural income was earned by the assessee during the block period, the matter should go back to the file of the Assessing Officer. While ascertaining the quantum of the agricultural income, the Assessing Officer will take into consideration the income of the family members whom from similar orchards in their hands. While doing so that Assessing Officer will also keep in mind the size of the orchards or agricultural land. We further direct that assessee should be allowed opportunity to file necessary details to substantiate her claim.

3. In the second round, the Assessing Officer had rejected the plea of the assessee with regard to undisclosed income pertaining to the agricultural income arising from the above two orchards. One of the points taken by the Assessing Officer was that the assessee had already shown returns in respect of the said orchards which were on the higher side compared to the returns of her husband's and son's orchards within the same area. The Assessing Officer also took note of the fact that the agreements for sale of fruits which had been placed on record were common between the assessee, her husband, her son and the third party.

4. The Tribunal in the second round concluded, after looking at the evidence, that insofar as the orchard at Surath was concerned, in addition to the income derived from the sale of apples and pears, the assessee was also deriving income from the sale of other fruits, namely, cherries, almonds and pecan nuts. This latter income had not been disclosed earlier and was now disclosed as part of the undisclosed income. Insofar as the Kullu orchard is concerned, it appears that the Tribunal considered the post search period agreements to arrive at the conclusions that it did and thereby accepting the assessee's version.

5. We have heard the counsel for the parties at length and we find that there exists a great deal of confusion with regard to the quantum of agricultural income which form part of the undisclosed income. According to the learned counsel appearing on behalf of the revenue, there is nothing in the impugned order which would enable us to ascertain as to whether the undisclosed agricultural income did not already constitute part of the originally declared income. In fact, according to him, the only exercise that was required to be done was to see what was the additional agricultural income apart from what had already been declared in the returns. Specifically, the learned counsel stated that the Tribunal ought to have examined as to whether the income from almonds, cherries and pecan nuts had not already been declared by the assessee and included in her original returns. It is only if they were not so included that such income could be treated as undisclosed income.

6. The learned counsel for the assessee/respondent submitted that there is no infirmity in the order passed by the Tribunal. He submits that in the first round the Tribunal had restored the entire issue to the file of the Assessing Officer to examine the extent of the agricultural income which had been undisclosed. On the basis of the evidence collected by the Assessing Officer, the Tribunal, being the final fact finding authority, had accepted the assessee's version and there can be no quarrel with the same.

7. However, as noted above, we find that there has been a great deal of confusion with regard to the stand taken by the assessee. From the order of the Tribunal in the first round, it appears as if the assessee had disclosed income from apples and pears in respect of only the Surath orchard and no agricultural income at all had been disclosed in respect of the orchard at Kullu. But, the stand of the assessee in the second round, as appearing from the order of the Tribunal, is that the assessee had already declared the agricultural income relating to sale of apples and pears of both the orchards and that it was only cash sales pertaining to other fruits, namely, cherries, almonds and pecan nuts, which had not been declared and which were not now being disclosed as part of undisclosed income. We find that these aspects have not been examined by the Tribunal in the impugned order.

8. In our view, this requires reconsideration by the Tribunal. We, therefore, remit the matter to the Tribunal to consider the entire issue with regard to additional agricultural income declared as part of undisclosed income afresh and return a finding in accordance with law. This appeal stands disposed of.