(1992) 04 DEL CK 0029

In the Delhi High Court

Case No : Income-tax References No''s. 87 to 89 of 1980

Commissioner of Income Tax APPELLANT

Vs

Sudershan Talkies RESPONDENT

Date of Decision : 22-04-1992

Acts Referred:

Citation : (1993) 112 CTR 165 : (1993) 201 ITR 289

Hon'ble Judges : Mahinder Narain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : B. Gupta, for the Appellant; Bishamber Lal, for the Respondent

Judgement

1. These references are connected with Income Tax References Nos. 48-50 of 1975 (Addl. Commissioner of Income Tax Vs. Sudershan Talkies, , which have been disposed of by judgment delivered today. Briefly stated, the facts are that, in respect of assessment years 1967-68 to 1969-70, the Income Tax Officer passed assessment orders but did not levy any interest u/s 217 nor initiate proceedings u/s 273(b)of the Act because of the non-compliance by the assessed with the provisions of section 212 of the Act.

2. The Commissioner of Income Tax then exercised jurisdiction u/s 263 and set aside the assessment order and directed the Income Tax Officer to charge interest u/s 217 and also to initiate penalty proceedings u/s 273(b) of the Act. The decision of the Commissioner of Income Tax was set aside by the Tribunal. The Tribunal upheld the decision of the Commissioner of Income Tax in so far as it related to the charging of interest u/s 217. The Tribunal, however, set aside the order of the Commissioner of Income Tax which had directed the initiation of proceedings u/s 273 against the assessed. Against that decision, reference applications were filed being Income Tax References Nos. 48-50 of 1975 (see Addl. Commissioner of Income Tax Vs. Sudershan Talkies, which have been decided in favor of the assessed.

3. Pursuant to the order passed by the Commissioner of Income Tax and setting

aside of the assessment order, the Income Tax Officer, in respect of those very years, namely, 1967-68, 1968-69 and 1969-70 passed fresh assessment orders. Interest was sought to be charged u/s 217 and show cause notice was also directed to be issued u/s 273. Against this order, appeals were filed and it was held by the Appellate Assistant Commissioner that, because of the directions given by the Tribunal against the order passed u/s 263, the assessments were no longer valid and were accordingly annulled. It was, however, directed that the Income Tax Officer can charge interest u/s 217. The Tribunal, on further appeal, upheld the decision of the Appellate Assistant Commissioner. The Tribunal has referred the following question of law to this court :

"Whether, on the facts and circumstances of the case, the Tribunal was correct in holding that the question of charging interest u/s 217 and levying penalty u/s 273(b) were totally extraneous to the scope of the assessment order, and as such it could not be covered by recourse to section 263 of the Income Tax Act, inasmuch as it was neither prejudicial to the interests of the Revenue nor was it erroneous ?"

4. It is clear from our decision in Income Tax References Nos. 48 to 50 of 1975 (see Addl. Commissioner of Income Tax Vs. Sudershan Talkies, that the fresh assessment which was made by the Income Tax Officer was rightly annulled by the Appellate Assistant Commissioner. The decision of the Tribunal against the order passed u/s 263 has been upheld by us in Income Tax References Nos. 48 to 50 of 1975 and as a consequence thereof, only interest can be charged but no proceedings u/s 273 could be initiated. This has been reaffirmed by the Appellate Assistant Commissioner and the Tribunal in the present case. The question of law is, Therefore, answered in favor of the assessed. There will be no order as to costs.