(2010) 02 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Tek Chand Saini RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:
Income Tax Act, 1961 — Section 143(2), 143(3), 144A, 147, 148

Citation : (2010) 325 ITR 343

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This appeal by the Revenue has been preferred u/s 260A of the Income Tax Act, 1961 (for brevity the "Act"), challenging the order dated June 6, 2008 passed by the Income Tax Appellate Tribunal (for brevity "the Tribunal"), Delhi Bench in I. T. A. No. 2091/Del/ 2005 for the assessment year 2000-01. The Revenue has claimed that the following question of law would emerge from the order of the Tribunal:

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the order passed u/s 263 by the Commissioner of Income Tax, Rohtak was only a change of opinion and consequently did not meet the requirements of the provisions for invoking his powers u/s 263 of the Income Tax Act ?

2. Briefly, the facts of the case are that the assessee has been running a proprietary business with the name M/s. Saini Traders, Jhajjar Road at Rohtak. He was dealing in agricultural implements. He filed his return of income for the assessment year 2000-01 on August 28, 2000 and his income was Rs. 1,01,480. The assessing authority received some information from the Income Tax Department (Investigation) and then reopened the assessment by issuing a notice u/s 148 of the Act. Consequently, the assessment came to be framed u/s 143(3) read with Section 147 of the Act on an income of Rs. 3,48,700 on March

31, 2005. Accordingly, the assessing authority made an addition of Rs. 2,43,014 representing a house which had allegedly been purchased by the assessee out of the undisclosed source of income. The claim of the assessee that the house belonged to the Hindu undivided family was not accepted. The rental income of Rs. 4,200 was also added.

3. On appeal before the Commissioner of Income Tax (Appeals), Rohtak, the assessee-respondent challenged the assessment on the ground that appropriate notice u/s 143(2) of the Act was not issued and consequently, the assessment framed by the Assessing Officer was required to the cancelled. However, on March 1, 2007, a show-cause notice u/s 263 of the Act was issued by the Commissioner of Income Tax (Appeals), Rohtak with the observation that the assessment order passed by the Assessing Officer on March 31, 2005 u/s 143(3) read with Section 147 of the Act was prejudicial to the interest of the Revenue. The Commissioner of Income Tax (Appeals), Rohtak did not accept the view of the Assessing Officer which was based on the report of the Departmental valuer which has quoted that the house was constructed during the year 1993-96. The Commissioner of Income Tax, Rohtak, however, in exercise of his revisional jurisdiction held that the construction of the residential house was completed only in March 2000 and the Assessing Officer has committed an error.

4. Against the order of the Commissioner of Income Tax, Rohtak, the assessee-respondent filed appeal before the Tribunal. On the question claimed by the Revenue, the Tribunal has recorded a categorical finding that the Assessing Officer has discussed the issue in paragraph 4 of his order in detail which has also taken notice of substantial evidence produced by the assessee-respondent which led to the conclusion that the construction of the house was raised between November 1993-96. The assessee-respondent has produced witnesses to substantiate his claim. The Tribunal also noticed the endeavour of the Assessing Officer in making reference to the Valuation Cell, the Departmental Valuation Officer (DVO), who had submitted a report, which specified the value of the property and the period of construction. The Assessing Officer also made reference u/s 144A of the Act to the ADIT (Investigation), Rohtak, where he has mentioned these facts and no notice has been taken by the Commissioner of Income Tax with regard to the outcome of the reference. The view of the Tribunal is that DVO is considered to be an expert and his report has a substantial persuasive value. The Tribunal also found that on a reference u/s 144A of the Act made to the ADIT (Investigation), Rohtak, the contention of the assessee was accepted and it stood concluded that the house was constructed between 1993 to 1996 which could not be included in assessment year 2000-01. The Tribunal has further recorded a finding that the Commissioner of Income Tax, Rohtak while exercising revisional jurisdiction has not placed reliance on any evidence whatsoever whereas the order of the Assessing Officer is based on substantial evidence. The conclusion drawn by the Commissioner of Income Tax, Rohtak, has been found to be bald and perverse.

5. It has further been pointed out that the view of the Assessing Officer is one possible view and the same cannot be substituted by the Commissioner of Income Tax, Rohtak, merely because another view could be possible.

6. We have heard learned Counsel for the Revenue at considerable length and find that these are pure findings of fact as to whether the house was constructed between 1993 and 1996. The Assessing Officer has placed firm reliance on the report of the DVO and also made reference to the ADIT (Investigation), Rohtak u/s 144A of the Act. The view of the Commissioner of Income Tax, Rohtak is not based on any evidence and therefore, the conclusion reached by him lacks support completely. The findings recorded by him are laconic and have not been sustained rightly by the Tribunal. These are essentially questions of facts and would not give rise to a question of law much less a substantial question of law warranting admission of the appeal. Accordingly, the appeal fails and the same is dismissed.

