(2012) 02 RAJ CK 0017

In the Rajasthan High Court

Case No : ITA No. 3 of 1999

Dy. CIT — APPELLANT

Vs

Rajasthan State Industrial Development and Investment Corporation — RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:
Income Tax Act, 1961 — Section 260A, 43D

Citation : (2012) 02 RAJ CK 0017

Hon'ble Judges : S.S. Kothari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : J.K. Singhi with Anuroop Singhi, for the Appellant; Anant Kasliwal, for the Respondent

Judgement

A.M. Sapre, J.—This is an appeal filed by the CIT (Revenue) under s. 260A of the IT Act against the order dt. 13th Oct., 1998 passed by the Tribunal, Jaipur Bench in ITA No. 2265/Jp/1992. The appeal was admitted for final hearing on following substantial questions of law :

(i) Whether as per provisions of s. 43D of the IT Act, by way of interest is not chargeable to tax to its P&L a/c if it is actually received by the institution?

(ii) Whether the change of system of accounting from mercantile system to cash system will absolve the assessee from paying a tax in view of s. 43D of the IT Act?

2. Having heard the learned counsel for the parties and on perusal of the record of the case, we are of the considered opinion that appeal involves one more substantial question of law, which ought to have been framed while admitting the appeal on aforementioned two substantial questions of law. We therefore consider it proper for just decision of the case to frame one more additional question below for answer by taking recourse to the powers conferred on us by proviso to sub-s. (4) of s. 260A of the Act. The question is formulated below :

In the absence of any discussion much less finding recorded by the Tribunal on any of the issues and in particular on the issues argued before the Tribunal and on which aforementioned 2 questions are framed, whether a case for remand to Tribunal is made out?

3. The dispute arises out of asst. yr. 1991-92 and it essentially relates to applicability of s. 43D in relation to amount of Rs. 4,57,70,602 claimed by the assessee by way of deletion which was added by the IAO in their income.

4. The impugned order (para 5) reads as under :

We have examined the facts of this case and are of the opinion that the Supreme Court and various High Courts in the similar circumstances have held that assessee is not accepted to return any income from interest where recovery of principal itself is doubtful. Assessee can be taxed on real income. No tax can be charged on notional or unearned income. This was the essence of the decision of the Tribunal in the case of the assessee for earlier assessment years which has been followed by the CIT(A) while deciding this appeal. We, therefore, do not feel any reason or justification for interfering in the order passed by the CIT(A). Under the circumstances, the appeal filed by the Revenue is dismissed.

5. Mere perusal of the aforequoted order would go to show that the Tribunal did not discuss nor dealt with and nor recorded any finding on any of the issue much less on the issue on which the aforementioned two substantial questions of law are framed. It is also clear when we peruse paras 3 and 4 of the impugned order, which show that Tribunal also took note of these submissions.

6. In our opinion it was necessary for the Tribunal rather it was obligatory upon the Tribunal to have dealt with and recorded clear finding either way on each of the issue urged by the parties (as taken note of in paras 3 and 4) with the aid of relevant sections and case law on the subject and then decide the appeal. Mere using the expression "Supreme Court and various High Courts in the similar circumstances have held" without mentioning much less giving reference to any citation as to what was held in which case and how and in what way a particular case has application to the facts of this case, was uncalled for. A brief reference to the case with its citation and the issue involved in the case would have enabled the appellate Court to appreciate the issue raised in the case. Indeed the appellate Court is required to examine the finding recorded by the Tribunal with a view to find out as to whether it is liable to be sustained or is required to be upset. If there is no finding, then there is nothing to examine. The case in hand is of this nature.

7. In our opinion therefore, we only answer the additional substantial question of law No. 3 in favour of appellant and against the respondent leaving question Nos. 1 and 2 to remain unanswered for being decided by the Tribunal afresh. Indeed as a result of answering question No. 3, the inevitable consequence is that the matter (appeal) has to be remanded to the Tribunal for its fresh decision on the issues urged in the appeal before the Tribunal. In the absence of finding recorded

by the Tribunal on any of these issues, it may not be possible for this Court to decide any of them for the first time in this appeal.

8. We are also of the opinion that there is no prejudice likely to be caused to the parties if the case is remanded to the Tribunal because, both the parties would get an opportunity to raise all points in support of their contentions and further approach to this Court in appeal if occasion so arises. This Court does possess power to remand the case under s. 260A of the Act to the Tribunal which is a last Court of appeal on facts and law. In the light of foregoing discussion, the appeal succeeds and is allowed in part. The impugned order is set aside. The case (appeal) is remanded to the Tribunal for deciding the same afresh on merits as per observations made above. It be now decided within six months from the date of this order.

