(2006) 12 GAU CK 0009

In the Gauhati High Court

Jorehaut Group Ltd. APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:
Income Tax Act, 1961 — Section 147, 148

Citation : (2007) 289 ITR 422

Hon'ble Judges : D. Biswas, J;A. Hazarika, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D. Biswas, J.—Heard Mr. R.P. Agarwal, learned senior counsel and Dr. A.K. Saraf, learned senior counsel for the appellant assisted by Ms. M. L. Gope, learned Counsel. Also heard Mr. U. Bhuyan, learned standing counsel for the Revenue.

2. Having regard to the nature of the issues raised for adjudication in this appeal and the submission of learned Counsel for the parties that the issues have been dealt with earlier by this Court, we propose to dispose of this appeal at the admission stage.

3. The primary question to be considered in this appeal is whether, on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal was justified in confirming the disallowance of cess paid on green tea leaves in the backdrop of the judgment and order dated March 11, 2005, passed by this Court in Assam Co. Ltd. Vs. Union of India (UOI) and Others, Dibrugarh, and the judgment and order dated January 24, 2006 (see page 419 supra), passed in the case of the appellant-company, inasmuch as, this Court in the said two judgments had held that the deduction on cess paid on green tea leaves has to be allowed on 100 per cent, composite income under the Income Tax Act, 1961, and not on 60 per cent, of the agricultural income.

4. The above question was dealt with by a learned single judge of this Court in Assam Co. Ltd. Vs. Union of India (UOI) and Others, and other identical cases).

By the judgment and order dated March 11, 2005, the learned single judge after consideration of a number of decisions of this Court as well as other courts held that the concerned assessee was entitled to deduction on the cess on green leaves on the composite total income of the assessee for the relevant assessment year. Holding thus, the learned single judge set aside the impugned notices issued under Sections 147 and 148 of the Income Tax Act.

5. The ratio available in the aforesaid judgment was also followed by another single judge of this Court (one of us) in Jorehaut Group Ltd. Vs. Union of India (UOI) and Others, (W.P. (C) No. 586 of 2004 and other identical cases) disposed of on January 24, 2006. The question raised in this appeal was settled by this Court in the aforesaid two judgments, and the issue remains no more res integra.

6. It would appear from the pleadings on record that both the judgments of this Court were brought to the notice of the learned Tribunal and despite that the learned Tribunal, which is otherwise bound to follow the judgment of the jurisdicrional High Court, has failed to take care of it and act thereupon in answering the questions pleaded before the learned Tribunal. Judicial propriety requires that the decision of the jurisdicrional High Court has to be obeyed by all Tribunals unless the contrary is available from any judgment of the apex court.

7. We have examined the impugned judgment passed by the learned Tribunal. It appears that though the learned Tribunal referred to the aforesaid two judgments, yet it failed to act upon the ratio available therein, obviously for no reason available on record, we believe that the omission has taken place due to inadvertence and for this reason, we proceed to correct the judgment and order impugned in this appeal following the ratio available in the aforesaid two judgments.

8. Consequently, we allow this appeal, set aside the impugned order dated August 23, 2006, passed by the learned Tribunal in so far it relates to the question raised in this appeal, and answer the question in favour of the assessee and against the Revenue reiterating that the cess on green tea leaves shall be allowed on 100 per cent, composite income under the Income Tax Act, 1961, before applying Rule 8 of the Income Tax Rules.