
(2005) 08 DEL CK 0068
In the Delhi High Court
Case No : IT Appeal No. 198 of 2005

Kamaljit

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 254, 254(2)

Citation : (2005) 199 CTR 578 : (2006) 150 TAXMAN 191

Hon'ble Judges : T.S. Thakur, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : K.R. Manjani, for the Appellant; R.D. Jolly and S.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. The return, filed by the appellant-assessed, had not yet culminated into an assessment order, when the AO, issued a notice u/s 148, inter alia, stating that the deposits made in the banks and the properties purchased by the assessed referred to in the notice gave rise to reasons that income invested in the same had escaped assessment. Pursuant to the said notice, the AO concluded the assessment proceedings and found that an income of Rs. 18,94,490 had indeed escaped assessment. Aggrieved by the said order, the appellant went up in appeal before the CIT(A), who reduced the amount that escaped assessment to Rs. 13,82,032. In a further appeal before the Tribunal, the said amount was further reduced and the appeal disposed of by order dt. 31st July, 2003 with the following observation :

"We have carefully considered the material on record. On perusal of the order of the AO it is found that the assessed could not explain the source of deposits. The learned CIT(A) has rightly held that the investment in the deposits has remained unexplained. The learned CIT(A) has also considered deduction of Rs. 17,27,625 in respect of opening bank balances. In our view, Therefore, the order of learned CIT(A) is fully justified and requires to be upheld. Hence, ground No. 2 is

rejected."

2. Aggrieved by the order passed by the Tribunal, the appellants preferred ITA No. 463/2003 before this Court, which was dismissed by this Court by order dt. 14th March, 2005. One of the contentions that was urged before this Court in that appeal was that the AO could not take recourse to the provisions of Section 148 of the IT Act, 1961, because the proceedings before the AO had not terminated as on the date of the issue of the notice under that provision. This Court, however, repelled that contention relying upon the provisions of Section 147, Expln. 2(b) of the IT Act and a Division Bench decision in Commissioner of Income Tax Vs. S.R. Fragrances Ltd.,

3. Mr. Manjani, submits that the appellant has taken recourse to the remedy by way of an appeal before the Supreme Court against the order of this Court dt. 14th March, 2005. In addition, the appellant had already filed an application u/s 254(2) of the IT Act, 1961, for rectification of the order dt. 31st July, 2003. The said rectification application has now been dismissed by the Tribunal in terms of its order dt. 29th Oct., 2004. The Tribunal has relying upon the decision of this Court in Ms. Deeksha Suri and Others Vs. Income Tax Appellate Tribunal, , Karan and Co. Vs. ITAT, and Commissioner of Income Tax Vs. Vichitra Construction (P.) Ltd., , dismissed the said application holding that the appellant was in substance, seeking review of the order of Tribunal dt. 31st July, 2003, which was not permissible in proceedings u/s 254 of the Act. The present appeal before us is directed against the said order of the Tribunal.

4. Having heard learned Counsel for the appellant and Mr. Jolly for the Revenue, we see no error of law in the view taken by the Tribunal. Mr. Manjani, however, argued that the Tribunal had not examined whether the reasons given in the notice u/s 148 disclosed escapement of income from taxation. Any proceedings based on any such notice were, according to learned Counsel, wholly impermissible under the scheme of the Act. We find no merit in that contention either. We say so for two precise reasons. Firstly, because the argument whether the proceedings initiated by the AO in terms of the notice u/s 148 could culminate in an order of assessment determining liability to pay tax at a high figure could and ought to have been raised in the proceedings before the authorities below and in the appeal which the appellant had preferred before this Court against the order of the Tribunal dt. 31st July, 2003. Having failed to do so, such a plea cannot, in our opinion, be urged in the present proceedings, the scope whereof is limited to considering whether the order passed by the Tribunal u/s 254 of the Act was justified.

5. Secondly, because the authorities below having concurrently come to the conclusion that there was escapement of income to the extent of Rs. 13,82,032, it is difficult to appreciate how the said finding which has attained finality can be brushed aside and the notice held to be bad at this belated stage. No substantial question of law arises for the consideration of this Court. The appeal accordingly fails and is hereby dismissed.