(2015) 08 KAR CK 0100

In the Karnataka High Court

Case No : ITA No. 751 of 2009

Maina Shetty APPELLANT

Vs

The Dy. Commissioner of Income Tax, Central Circle RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 148, 149, 150, 234A

Citation : (2015) 08 KAR CK 0100

Hon'ble Judges : Vineet Saran and B. Manohar, JJ.

Bench : Division Bench

Advocate : A. Shankar and M. Lava, Advocates, for the Appellant; K.V. Arand and G. Kamaladhar, Advocates, for the Respondent

Judgement

Vineet Saran, J.—This is an appeal filed by the assessee challenging the order of the Tribunal whereby reopening of assessment for the assessment year 1997-98 has been held to be valid. The appeal was admitted on 21.4.2010 on the following questions of law:

"(i) Whether the Tribunal was right in law in upholding notice issued under section 148 is valid on the facts and circumstance of the case?

(ii) Whether the Tribunal was justified in law in holding that the sum of Rs. 4,97,046/- represents unexplained investments in the construction of the building for the A.Y. 1997-98 on the facts and circumstance of the case?

(iii) Whether the Tribunal was justified in law in appreciating the levy of interest u/s. 234A, B, D of the Act on the facts and circumstances of the case?

2. Brief facts of the case are that for the assessment year 1997-98, appellant - assessee filed its return of income on 18.8.1997. The said return has been accepted by the Assessing Officer under Section 143(1) of the Income Tax Act, 1961 (''the Act'' for short) on 15.10.1997. Then on 17.4.2006, the Tribunal, in the case of assessee for the assessment year 1998-1999, passed an order giving certain observations with regard to the income relating to the assessment year

1997-1998. Pursuant to such order of Tribunal, a notice for reopening of assessment under Section 148 of the Act for the assessment year 1997-1998 was issued by the Assessing Officer on 23.10.2006.

3. It is contended by the learned counsel for the appellant that limitation for reopening of assessment provided under Section 149 read with Section 150 of the Act would be six years, which would be expiring on 31.3.2004 and thus reopening notice issued after 31.3.2004 would be barred by limitation, as the extended time limit would not be available for the present case because the order of Tribunal passed on 7.4.2006 was itself passed beyond the said period. In support of this submission, Sri A. Shankar, learned counsel for the appellant relies on the decision of the Apex dated 20th September, 2012 in the case of M/s. Spences Hotels (P) Limited vs. Deputy Commissioner of Income Tax (Civil Appeal No. 6745/2012), wherein it has been held that in similar circumstances, where the reopening was on the basis of an order passed by the Tribunal beyond the period of limitation specified in Section 149 of the Act, the reopening was held to be in valid.

4. Sri K.V. Aravind, learned counsel for the respondent does not dispute the position that the ratio of the said judgment in the case of M/s. Spences Hotels (P) Limited (supra) directly applies to the facts of the present case. As such, in view of the aforesaid, we answer to the first question in favour of the assessee and against the respondent and hold that in the facts and circumstances of the case, notice issued under Section 148 of the Act was not valid.

5. In view of the aforesaid, since the first question has been answered in favour of the assessee, learned counsel for the parties agree that the other two questions would only be academic and need not be answered.

Appeal stands allowed. No order as to costs.

