(2007) 06 SHI CK 0037

In the High Court Of Himachal Pradesh

Nathu Ram and Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 15-06-2007

Acts Referred:
Income Tax Act, 1961 — Section 144A, 256

Citation : (2007) 06 SHI CK 0037

Hon'ble Judges : Deepak Gupta, Acting C.J.;Surinder Singh, J

Bench : Division Bench

Judgement

Deepak Gupta, Actg. C.J.

1. The following question has been referred for the opinion of this Court u/s 256 of the Income Tax Act:

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the order dated 20-12-1985 of the first Commissioner (Appeals) had become final and precluded the assessee''s right of challenging the fresh assessment on merits after setting aside of the assessment ?

2. The brief facts of the case are that the assessee firm filed its return for the assessment year 1983-84. A fire had occurred in one of the forests taken on lease by the assessee and the assessee lodged a claim of Rs. 2,50,800 with the insurance company. The insurance company only paid an amount of Rs. 1,87,000. The assessee claimed that an amount of Rs. 63,800 which was the difference between the amount of loss suffered by it and claimed from the insurance company should be treated as its loss. The assessing officer came to the conclusion that since the assessee had debited all the expenses in connection with exploitation of the forest lot and preparation of the timber scants in its P&L account and did not show the value of closing stock of the scants which were burnt in the fire, the assessee was not entitled to claim the loss of Rs. 63,800.

3. The assessee filed an appeal before the Commissioner (Appeals), (for short Commissioner (Appeals)). The Commissioner (Appeals) disposed of the appeal in

the following terms:

Considering the facts and circumstances of the case for the year under appeal, the receipt from insurance company straightaway has been taken by Income Tax Officer as income. However, in view that the details of profit and losses of each of the lot, has to be correctly drawn in, the loss if any, and stock has to be entered and correctly brought out and is to be adjusted against the receipt of the insurance claim. The Income Tax Officer is directed to quantify the loss, damage done by fire verify correctly the stock position and arrive at the correct amount of profit or loss, as the case may be and the amount of receipt from insurance company be adjusted accordingly. The matter after going through the details as furnished by Shri Vasudeva, learned Advocate General and considering the explanations and clarifications filed by him, the matter is set aside to the file of the Income Tax Officer. He will also look into the other grounds of appeal also.

4. The assessing officer thereafter took up the proceedings in terms of the order of the CIT. During the course of these proceedings (assessee) filed a petition u/s 144A of the Income Tax Act before the Inspecting Assistant Commissioner, Chandigarh in which he sought issuance of directions to the Income Tax Officer, Palampur, that the loss of Rs. 63,800 claimed by the assessee against which the Income Tax Officer, Palampur was proposing to make addition of Rs. 1,87,178 in respect of exploitation of assessee''s forest lot. The case of the assessee was that an amount of Rs. 1,87,178 should be added to his income for the assessment year 1983-84 and it be allowed further loss of Rs. 63,800. The Inspecting Assistant Commissioner disposed of this petition with the following directions:

I have carefully considered the matter and find no merit in the assessee''s contention. There is no doubt that there are two aspects of the point at issue. One is to what exact loss was suffered by the assessee in the fire i.e. whether it was as much as was claimed by the assessee in its books of account/return of income (by excluding the burnt scants from the stock in hand). The second issue is whether the insurance claim received by the assessee shortly after the close of the accounting year is to be adjusted against the fire loss or the same is to be assessed as, assessee''s income in the year in which the amount of insurance claim was actually received, namely in the immediately subsequent year. The Commissioner (Appeals) has also desired that the loss should be ascertained and the insurance claim should be adjusted against the loss. As far as the loss arising to the assessee as a result of the fire is concerned the Income Tax Officer all along has not doubted the assessee''s claim and has accepted the assessee''s book/returned version wherein the assessee has excluded the burnt scants from the stock in hand. In the assessment order dated 29th Nov., 1984, the Income Tax Officer did not make any addition on account of excessive loss claimed by the assessee by exclusion of burnt scants from the stock in hand. Since the assessee''s book/returned version in this regard has not been doubted, the loss as claimed by the assessee in its book/return of income by excluding the burnt scants from the stock in hand is accepted. Regarding the insurance claim received by the assessee, the same is clearly assessable in the year under consideration as the assessee maintains accounts on mercantile basis and the insurance claim became due on the date of fire/lodging of claim with the insurance company. The same is therefore to be adjusted against the loss which already stands claimed by the assessee (by excluding burnt scants from the stock in hand). The same has desired by the Commissioner (Appeals) also in his order dated 20-12-1985 setting aside the Income Tax Officer''s order dated 29-11-1984. It is accordingly held that amount of Rs. 1,87,178 being the insurance claimed received by the assessee is assessable in the year under consideration. There is no question of allowing any loss of Rs. 63,800 as claimed by the assessee because the loss from fire as also all expenses relating to the exploitation of forest lot No. 1 already stand claimed by the assessee, as mentioned above and had been allowed by the Income Tax Officer in the assessment order dated 29-11-1984.

5. Thereafter the assessing officer finalized the return and added the amount of Rs. 1,87'',000 to the income of the assessee for the assessment year 1983-84 and disallowed the loss of Rs. 63,800 claimed by the assessee. The appeals filed by the assessee before the Commissioner (Appeals) and Tribunal were rejected. The Tribunal rejected the appeal mainly on the ground that since the assessee accepted the earlier order of the Commissioner (Appeals) and that of the Inspecting Assistant Commissioner, while giving directions u/s 144A of the Income Tax Act, this question had already become final and could not be reopened in the fresh assessment made.

6. After going through the entire orders, we are of the view that as far as Commissioner (Appeals) is concerned, he had only remanded the case back with liberty reserved to raise all points before the assessing officer. However, the assessee chose to approach the Inspecting Assistant Commissioner u/s 144A of the Income Tax Act and sought certain directions. In the course of deciding this application of the assessee, the Inspecting Assistant Commissioner made observations which have been quoted above. These observations were clearly against the assessee. He did not choose to challenge the said order and, therefore, it attained finality. The assessing officer was bound by the order of the Inspecting Assistant Commissioner and in our opinion, there is no error in the order passed by him or in the order of the learned Tribunal that the assessee was bound by the directions issued by the Inspecting Assistant Commissioner since he had not challenged the order of the Inspecting Assistant Commissioner in appeal.

7. In view of the aforesaid discussion, we answer the reference against the assessee and in favour of the petitioner. The learned Registrar General of this Court is directed to send a copy of this order to the Tribunal, K. No. 41, Sector 2-A, Chandigarh, for necessary action.

