(2012) 01 AHC CK 0364

In the Allahabad High Court

Case No : Income Tax Appeal No. 6 of 2005 (Assessment year 1999-2000)

Parvati Construction APPELLANT

Vs

Income Tax Appellate Tribunal Lucknow and Others RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:
Income Tax Act, 1961 — Section 147, 148, 152(2), 44AD, 60A

Citation : (2012) 207 TAXMAN 229

Hon'ble Judges : Uma Nath Singh, J;Satish Chandra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Dr. Satish Chandra, J.—This appeal u/s 60-A of the Income Tax Act has been filed against the judgment and order dated 21.07.2004 passed by the Income Tax Appellate Tribunal, Lucknow in I.T.A.No.463/LUC/03 for the assessment year 1999-2000.

2. This Court vide order dated 10.02.2005 has admitted the appeal on the following substantial questions of law:

(i) Whether in light of Ratio of the judgment passed by Apex Court in Commissioner of Income Tax, Orissa Vs. Govinda Choudhury and Sons, Gosaninuagaon, Orissa, to that effect that:

If the amounts under a contract were not paid at the proper time and interest was awarded to the respondent for such delay, the interest was only an accretion to the respondent''s receipts from the contract and was attributable to and incidental to the business carried on by it

the learned court below was justified in reaffirming the award receipts as compensatory in nature and in adding the same as income from other sources for taxable purpose?

(ii) Whether the learned court below was justified in upholding and reaffirming the reopening of assessment u/s 147 of the Act?

(iii) Whether the learned court below was justified in upholding and confirming the non-application of the provisions of Sections 152(2) and 44AD of the Act?

3. The brief facts of the case are that the appellant-assessee is a Civil Contractor. In respect of a contract executed during 1986 to 1989, there was a dispute between the appellant-assessee and Lucknow Development Authority. Finally, the dispute was referred to an Arbitrator by the Court. On 22.12.1999, the sole Arbitrator made an award of Rs. 12.65 lakhs along with interest at the rate of 6%, which was also upheld by this Court.

4. During the assessment year under consideration in reassessment proceedings, the A.O. opined that the interest received on the award is an "income from other sources", and not an "income from business" as claimed by the assessee in the original return. The view taken by the A.O. was upheld not only by the First Appellate Authority but also by the Tribunal. Still being not satisfied the assessee has filed the present appeal.

5. With this background, Sri Rohit Nandan Shukla, learned Counsel for appellant-assessee submits that the appellant is not seriously challenging the reopening of assessment, under sections 148/147 of the Income Tax Act (substantial question No. 2).

6. However, he submits that the interest received on the arbitration award, is the "income from business" as it was not earned separately. For this purpose, he relied on the ratio laid down in the case of Commissioner of Income Tax Vs. B.N. AGARWALA and CO., , wherein the Hon''ble Supreme Court has observed that:-

It is now brought to our notice that the decision of the Orissa High Court in Govinda Choudhury and Sons Vs. Commissioner of Income Tax, was brought to this court in appeal and has since been disposed of, which is reported in Commissioner of Income Tax, Orissa Vs. Govinda Choudhury and Sons, Gosaninuagaon, Orissa, In the said decision, it is recorded that learned counsel for the assessee conceded that interest did constitute a revenue receipt. The court, however, held on the other question (arising in that appeal) that the said amount of interest cannot be taxed under the head "Income from other sources" which necessarily meant that it has to be taxed as a business receipt. It is true that on the question whether the interest constitutes income or not, the said decision is based upon a concession but we are of the opinion that it was a concession rightly made and is correct in law. Accordingly, we hold that interest is income and it has to be assessed as a business receipt. The question referred is accordingly answered in favour of the Revenue and against the assessee in the above terms. The appeals are disposed of accordingly.

7. He also relied on the ratio laid down in the case of Commissioner of Income Tax Vs. Malik Construction Co., , All.

8. Lastly, he made a request that the impugned order passed by the Tribunal

may kindly be set aside.

9. On the other hand, Sri D.D. Chopra, learned counsel for the respondent relied on the impugned order passed by the Tribunal. He further submits that Section 44AD of the Income Tax Act is applicable in the instant case, where the profit rate will be determined @8% in the case of a contractor. He also submits that the assessee has not incurred any expenditure for earning the interest. So, interest income can not be treated as income from business.

10. We have heard learned counsel for parties at length and gone through the materials available on record.

11. From the record, it appears that in this matter, the Civil Judge, Lucknow vide its order dated 28.04.1995 appointed a sole Arbitrator, who has made an award of Rs. 12.65 lakhs on 22.12.1995 along with interest @6% and the same was upheld by this Court. The assessee has paid the fee to the Arbitrator as determined by the Civil Court, so he has incurred expenditure to have an award along with interest.

12. In the instant case, the amounts under a contract were not paid at the proper time and, as such, the interest was awarded to the assessee for such delay. The interest was only an accretion to the assessee''s receipts from the contracts and was attributable to an incidental to the business carried on by it. The interest payable to the assessee partook of the same character as the receipts for the payments of which it was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amount granted to the respondent under the awards and treated as "income from other sources". Had there not been any delay, the assessee might have received the amount from the Lucknow Development Authority and the same might have been circulated in the business. Therefore, we are of the view that the interest payable to the assessee is at par with the business receipts, as it was not acquired separately as already held by Hon''ble Apex Court in the case of Commissioner of Income Tax, Orissa Vs. Govinda Choudhury and Sons, Gosaninuagaon, Orissa, .

13. In view of the above, the interest earned along with the award is to be treated as "income from the business" already claimed by the assessee.

14. The answer to the substantial questions of law no. 1 and 3 are in favour of the assessee and against the revenue and the answer regarding substantial question of law no. 2 is answered in favour of the revenue.

15. Thus, we set aside the impugned order passed by the Tribunal and allow the appeal as stated herein above.

16. No cost.

