(2008) 03 P&H CK 0180

In the Punjab And Haryana At Chandigarh

Pusham Bansal APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 25-03-2008

Acts Referred:
Income Tax Act, 1961 — Section 143, 144, 153, 260A

Citation : (2008) 220 CTR 312 : (2009) 316 ITR 256 : (2008) 173 TAXMAN 448

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The assessee has filed the present appeal u/s 260A of the IT Act, 1961 (for short ''the Act'') against the order of the Income Tax Appellate Tribunal, Delhi Bench, Delhi (for short the "Tribunal") passed in ITA No. 5153/Del/2004 dt. 9th Feb., 2007 for the asst. yr. 1996-97 raising the following substantial questions of law:

(i) Whether the Tribunal is justified in having dismissed the appeal of the assessee as infructuous mechanically overlooking the legality and the merits?

(ii) Whether the Tribunal order is sustainable against the provisions of Section 153(2A) as per which the set aside proceedings are barred by limitation?

2. The assessee, who is the proprietor of M/s Vikas Enterprises is in the lottery business. During the impugned year, the assessee filed the return of income at an amount of Rs. 97,290 on 30th March, 1998 which was processed u/s 143(1)(a) of the Act on 31st March, 1998. Case was selected for scrutiny and assessment was made u/s 144 on 15th March, 1999 at an amount of Rs. 45,90,048 making therein the following additions:

Rs.

Total income/loss as declared in the return of income: (-) 97,290

Add:

(i) Rs. 17,87,338 as unexplained Income as discussed 17,87,338 in body of the order:

(ii) Rs. 2 lakhs investment in car as discussed above 2,00,000 -------------- (+) 19,87,338

(iii) Investment in FDRs as discussed above 25,00,000

(iv) Rs. 2 lakhs is added in the absence of any details in respect of expenses as discussed 2,00,000 (+) 46,87,338 ------------- 45,90,048 -------------

3. The assessee filed an appeal against the said assessment order which was allowed vide order dt. 4th April, 2000 and addition of Rs. 17,87,338 and Rs. 2 lakh was deleted. The issue regarding addition of Rs. 25 lakh on account of investment in FDRs was remanded to the AO. Against the said order, the Department has filed ITA No. 3682/Del/2000 before the Tribunal. The Tribunal vide its order dt. 25th Nov., 2005 passed in the said appeal set aside both the orders of CIT(A) and assessment order and remanded the matter to the AO for de novo assessment.

The said appeal was decided by the Tribunal vide order dt. 25th Nov., 2005, which reads as under:

We therefore, set aside both the orders of the learned CIT(A) and the assessment order and direct the AO to frame the assessment de novo after allowing the assessee to produce computerized accounts and after making necessary inquiries and verification in relation thereto. In view of these directions, it is not necessary to adjudicate upon the two issues raised by the Revenue in this appeal.

4. It is also relevant to mention here that during the intervening period vide order dt. 30th March, 2002, the AO, in compliance of the order dt. 4th April, 2004 of the CIT(A) made the addition of Rs. 25 lakh as undisclosed income on account of investment of the assessee in the form of FDRs. The assessee filed an appeal against the said order before the CIT(A), who vide his order dt. 20th Feb., 2004 dismissed the appeal filed by the assessee. The operative part of the order of the CIT(A) is reproduced:

The appeal was fixed for hearing on 12th Nov., 2003, 9th Dec, 2003, 8th Jan., 2004 and 17th Feb., 2004 by issuing notices. Neither the appellant nor his Authorised Representative attended the hearing and also nor was any application for adjournment filed. Persistent noncompliance by the appellant leads to the apparent conclusion that he has nothing to say regarding the grounds raised by him in appeal. In view thereof I have no alternative but to dismiss the appeal. In the result the appeal is dismissed.

5. From the above order, it is clear that in spite of the various notices issued to the assessee for hearing of the case, no one was present on his behalf and

therefore, the CIT(A) came to the conclusion that there is nothing to say by the assessee regarding the grounds raised by him in the appeal.

6. The assessee further filed appeal, i.e., ITA No. 5153/Del/2004 before the Tribunal, which was dismissed vide impugned order dt. 9th Feb., 2007. While dismissing the appeal, the Tribunal has taken note of the fact that vide order dt. 25th Nov., 2005 passed in ITA No. 3682/Del/2000, the Tribunal has already set aside the order of assessment and de novo assessment by the AO has been ordered.

7. Shri Pankaj Jain, advocate, learned Counsel for the appellant has argued that the Tribunal was not justified while dismissing the appeal of the appellant as infructuous, as the same has resulted into a miscarriage of justice to the assessee. He has further argued that the order of the Tribunal is in divergence to the rules of judicial consistency and the matter has been remanded mechanically to the AO overlooking the period of limitation prescribed u/s 153(2)(a) of the Act, wherein the proceedings have already become time barred as on 31st March, 2007.

7. We find no force in the arguments raised by the learned Counsel for, the appellant. A perusal of the impugned order, i.e., order dt. 9th Feb., 2007 passed in ITA No. 5153/Del/2004 shows that the Tribunal has taken note of the fact that in the appeal filed by the Revenue before the Tribunal, i.e., ITA No. 3682/ Del/2000 decided on 25th Nov., 2005, the Tribunal has set aside the order of the CIT(A) dt. 4th April, 2004 passed in appeal filed by the assessee and the original order of assessment dt. 15th March, 1999 passed by the AO against the assessee and the AO has been directed to frame the assessment de novo. While dismissing the appeal of the assessee vide impugned order, the Tribunal has also made it clear that the AO shall frame fresh assessment as per the order of the Tribunal dt. 25th Nov., 2005. Thus, no prejudice has been caused to the appellant. Even otherwise, we are of the view that the question raised by the appellant does not arise from the impugned order of the Tribunal. As before the Tribunal, the assessee has challenged the order of the CIT(A) dt. 20th Feb., 2004 vide which addition of Rs. 25 lakh on account of undisclosed income regarding investment in FDRs was upheld and the said order was passed by the CIT(A) as assessee has failed to appear before him despite many adjournments granted to him.

9. Thus we find no infirmity in the order of the Tribunal. No such question of law as raised by the appellant arises in the present appeal for our determination.

