(2003) 03 RAJ CK 0012

In the Rajasthan High Court

Case No : IT Appeal No. 1 of 2003

Shilpa Associates APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Income Tax Act, 1961 — Section 253(3)

Citation : (2003) 181 CTR 92 : (2004) 113 ECR 222 : (2004) 165 ELT 22 : (2003) 263 ITR 317 : (2004) 1 RLW 702 : (2004) 135 STC 278 : (2004) 135 TAXMAN 277 : (2003) 3 WLC 736

Hon'ble Judges : Sunil Kumar Garg, J;N.N. Mathur, J

Bench : Division Bench

Advocate : Anjay Kothari, for the Appellant; S. Bhandawat, for the Respondent

Judgement

N.N. Mathur, J.—This appeal u/s 260A of the IT Act directed against the order of Tribunal, Jodhpur, dt. 5th June, 2002, was admitted for adjudication of the following substantial question of law :

''"Whether the Tribunal was right in holding that additional ground can be raised in the memo of appeal after the expiry of the period of limitation ?"

2. The relevant facts for adjudication of the above substantial question of law are that the appellant preferred an appeal before the Tribunal against the judgment of the CIT(A) dt. 17th Nov., 2000. The appeal was presented within the limitation. During the pendency of appeal, the assessee filed an application seeking permission to amend the existing grounds of appeal to raise additional grounds. The prayer is extracted as follows :

"The appellant seeks your honour''s kind permission to frame one ground as against 7 grounds of appeal raised in the memo of appeal. The amended ground reads as under as Sl. No. 1 :

1. "That on the facts and circumstances of the case, the authorities below erred in applying the net profit rate of 12.5 per cent as against disclosed at 10.32 per

cent."

In addition to above. I seek your honour''s kind permission to raise following additional grounds of appeal as Sl. No. 2 :

2. "That on the facts and in the circumstances of the case, the authorities below erred in not allowing the following deductions from the profit estimated by applying net profit rate :

Rs.

(a) Depreciation

97.062

(b) Interest to third party

17,600

(c) Provident fund

1,05,009

2,19,671"

3. The Tribunal permitted the amendment of original ground by raising amended ground No. 1. The permission to raise the additional ground as ground No. 2 was rejected as the Tribunal was of the view that a new/fresh issue can be raised only within the period prescribed for filing the appeal and not beyond that. The reasoning given by the Tribunal was that such a new/fresh issue pertains to the change of nature of appeal.

4. The view expressed by the Tribunal is obviously erroneous. The reasoning of the Tribunal is totally misplaced. It is within the domain of the Tribunal to permit or not to permit a fresh issue to be raised at the time of arguments, but it cannot decline to raise by way of amendment in the memo of appeal on the ground of limitation for filing the appeal. An appeal against the order of CIT(A) before the Tribunal can be filed u/s 253 of the IT Act, 1961, Sub-section (3) of Section 253 of the IT Act, 1961, provides as under :

"Section 253(3)--Every appeal under Sub-section (1) or Sub-section (2) shall be filed within 60 days of the date on which the order sought to be appealed against is communicated to the assessee or to the CIT, as the case may be."

5. Thus, the limitation is provided only for the purpose of filing the appeal. Once the appeal is filed within the limitation, the memo of appeal can be amended as per the practice and procedure. The view does not require any precedent to support. If it is required, even for the cosmetic purposes, the learned counsel has referred to a decision of the Madras High Court in J.D.B. Srinivasan v. Secretary of the Government of Tamil Nadu and Ors. (1994) 92 STC 631 (Mad). In the said case, the Court held that since the filing of additional grounds was a part of the

continuous process of filing the appeal and the appeal having been filed in time, the additional grounds which could not be put forth before the lower authority or along with the appeal, could be raised subsequent to the filing of the appeal. The Court further observed that there was no time-limit for filing additional grounds, nor was there a rigid rule in that regard. We are in complete agreement with the view expressed by the Madras High Court.

6. For the foregoing reasons, we allow the appeal and set aside the judgment of the Tribunal, Jodhpur, dt. 5th June, 2002. The permission to raise the additional grounds before the Tribunal in ITA No. 123/Ju./2001 (Asst. yr. 1997-98) is granted. The appellant shall carry out the amendment in the memo of appeal. The Tribunal shall pass a fresh order after hearing the parties. Cost easy.

