(2007) 07 DEL CK 0185

In the Delhi High Court

Silver Impex APPELLANT

Vs

Asstt. Commissioner of Income Tax RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Citation : (2009) 311 ITR 244 : (2008) 170 TAXMAN 550

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The assessee filed the present appeal u/s 260A of the Income Tax Act, 1961 (herein after referred to as ''Act'') against the order dated 24-2-2006 passed by the Income Tax Appellate Tribunal (herein after referred to as Tribunal''), Delhi Bench ''E'' in ITA No. 1966 (Del) of 2002 pertaining to the assessment year 1995-96.

2. The assessee filed his return of income on 31-10-1985 declaring "Nil income". The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 22-10-1996. Assessee filed revised return on 11-12-1996 declaring gross total income of Rs. 60,60,858 and the income disclosed in the revised return was also "Nil". The revised return was processed and deduction of Rs. 49,18,171 was allowed u/s 80HHC and the income of the assessee was assessed u/s 143(1)(a) of the Act at Rs. 11,42,867 and accordingly tax demand of Rs. 10,21,710 was raised.

3. This addition made u/s 143(1)(a) of the Act was confirmed by the Commissioner (Appeals) (''Commissioner (Appeals)'') vide his order dated21-8-1998 in assessee''s appeal.

4.The assessee thereafter filed further appeal and this addition was deleted by the Tribunal vide its order dated 16-8-2000 passed in ITA No. 4545 (Del) of 1998. The Tribunal held that while processing the return u/s 143(1)(a) of the Act, no disallowance can be made u/s 80HHC.

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5. Meanwhile the assessment in this case was completed u/s 143(3) of the Act on 31-3-1998 whereby the income of the assessee was assessed at Rs. 11,42,686 by allowing deduction u/s 80HHC of Rs. 49,18,171 instead of Rs. 60,60,858 as claimed by the assessee. However, no demand was raised u/s 143(3) of the Act because the same has already been raised u/s 143(1)(a) of the Act.

6. The assessing officer in its order u/s 154/143(3) of the Act observed that by way of giving effect to the order dated 18-8-2000 passed by the Tribunal, the demand created u/s 143(1)(a) of the Act was revised to "Nil". Therefore, Income Tax computation form prepared after passing of an order u/s 143(3) of the Act was required to be amended which would now create demand u/s 143(3) of the Act. Accordingly, opportunity was given to the assessee who submitted that deduction claim by him u/s 80HHC amounting to Rs. 60,60,858 has been allowed entirely by the Tribunal and as such the same should be allowed u/s 143(3) of the Act.

7. The assessing officer did not agree with the submissions of the assessee, as the Tribunal in its order has nowhere mentioned that the deduction claimed by the assessee u/s 80HHC amounting to Rs. 60,60,858 has been allowed entirely. It was further held by the assessing officer that the assessee has not challenged before the Tribunal the computation of deduction u/s 80HHC during the processing of the return u/s 143(1)(a) of the Act.

8. The assessee challenged this computation before the Commissioner (Appeals) and Commissioner (Appeals) vide Order dated 21-8-1998 declined to interfere with the computation.

9. The assessee then filed an appeal against the order of Commissioner (Appeals), and vide impugned order, the Tribunal dismissed the appeal of assessee.

10. It has been contended by learned Counsel for the assessee that in the assessment order passed, there was no adjudication of claim u/s 80HHC as claimed in the revised return and as such it was the duty of the assessing officer to consider such a claim if he had started rectification proceedings u/s 154 of the Act and he could not restrict such action to the computation of income only for the purposes of raising a demand and after the Tribunal has passed the order, the assessing officer could only accept the claim of the assessee u/s 80HHC at Rs. 60,60,858.

11. The present appeal has arisen out of the order passed u/s 154 of the Act wherein the assessing officer in order to give effect to the order of the Tribunal has amended computation of income made u/s 143(3) of the Act. It is an admitted fact that the assessee did not challenge the order passed u/s 143(3) of the Act and now only when order u/s 154/143 has been passed, the assessee has challenged the same which in our opinion does not lie in the present proceedings since proceeding under Sections 143(3)and 154 of the Act a

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separate and independent.

Under these circumstances, we find no ground to differ with the reasoning given by the three Income Tax authorities and as such, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

Accordingly, the present appeal filed by the assessee is not maintainable and the same is hereby dismissed.

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