(2009) 10 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Tilak Raj Bedi APPELLANT

Vs

Joint Commissioner of Income Tax RESPONDENT

Date of Decision : 13-10-2009

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

Citation : (2009) 319 ITR 385

Hon'ble Judges : Gurdev Singh, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—Delay condoned. Heard on the merits.

2. This appeal has been preferred by the assessee u/s 260A of the Income Tax Act, 1961 (in short, "the Act"), against the order dated July 11, 2008, passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh, in I.T.A. No. 217/Chandi/2008, for the assessment year 2001-02, proposing to raise the following substantial questions of law:

(i) Whether, in facts and circumstances of the case, the action of the authorities below in reopening the assessment of the appellant and restricting the deduction u/s 80-IB are legally sustainable in the eyes of law?

(ii) Whether, in facts and circumstances of the case, the action of the learned Income Tax Appellate Tribunal was justified in cancelling the deletion of interest charged u/s 234B?

3. The assessee made claim for deduction u/s 80-IB of the Act in respect of income received by way of incentive for export. The claim was upheld by the Assessing Officer, vide assessment order dated February 23, 2004. On the facts which came to light during the course of assessment for the next year, proceedings for reassessment were initiated u/s 147 of the Act and notice u/s 148 of the Act was issued to the assessee. The reasons for initiating

reassessment mentioned in notice dated January 16, 2006, are:

Assessment in the case of the assessee u/s 143(3) for the assessment year 2003-04 was done by the undersigned and during the assessment proceedings it came to notice that export incentives and interest income are to be reduced for the purposes of calculating deduction u/s 80-IB as the same is not available on profit derived from industrial undertaking.

During the assessment proceedings the assessee was confronted with the case law Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, and Commissioner of Income Tax Vs. Ritesh Industries Limited, wherein it was held that export incentives though business profits cannot be said to be profits derived from business. Vide order sheet entry dated August 8, 2005, the assessee on being confronted with the abovesaid fact replied, vide written submissions dated August 25, 2005, that ''the deduction u/s 80-IB at 25 per cent, has been claimed on Rs. 57,07,926 which is inclusive of bank FDR interest and the same may be considered at Rs. 56,12,067 being the total business income of the assessee subject to no penalty.

Deduction claimed u/s 80IB was accordingly recomputed and the abovesaid incomes of export incentives and interest were reduced for the purpose of calculation of Section 80-IB. For the assessment year 2002-03, the assessee has claimed deduction of Rs. 43,87,253 u/s 80-IB and it includes export incentives of Rs. 1,08,22,487 and interest of Rs. 51,704 and the same have to be disallowed for the purpose of calculation of Section 80-IB and, therefore, I have reason to believe that the income of Rs. 27,18,548 ((1,08,22,487 + 51,704) x 25%) has escaped assessment for the assessment year 2002-03.

Issue notice u/s 148 for the assessment year 2002-03.

4. After following the due procedure, reassessment was made and claim of the assessee u/s 80-IB of the Act was negatived. On appeal, the Commissioner of Income Tax (Appeals) rejected the objection of the assessee to reopening of assessment. It was held that from the original order of assessment, it could not be inferred that the Assessing Officer had formed any opinion on admissibility of deduction u/s 80-IB of the Act and thus, no change of opinion was involved in initiating proceedings. The judgment of this court in Vipin Khanna Vs. Commissioner of Income Tax and Others, was, accordingly, distinguished. The charging of interest u/s 234B of the Act was, however, set aside. On further appeal, the Tribunal affirmed the reassessment. The contention that reassessment was based on the judgment of the hon''ble Supreme Court in Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, was negatived by holding that the issue of Section 80-IB of the Act was clinched by the judgment of this court in Liberty India Vs. Commissioner of Income Tax, and thus, it was not a case of mere change of opinion but of reasons leading to forming of requisite satisfaction. The view of the Commissioner of Income Tax (Appeals) with regard to chargeability of tax u/s 234B of the Act was reversed

and was decided in favour of the Revenue.

5. We have heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the assessee submitted that reopening of the assessment was invalid as the same was by mere change of opinion and by relying upon a judgment which existed prior to the passing of the order of assessment. Reliance has been placed on the following judgments:

-- (i) Century Enka Limited v. ITO [1983] To submit that pre-existing 143 ITR 629 (Cal) judgment could not be the basis for reassessment Siemens Information System Ltd. v. Asst. CIT [2007] 295 ITR 333 (Bom) -- (ii) CIT v. Ramachandra Hatcheries To submit that reassessment [2008] 305 ITR 117 (Mad) could not be justified on change of opinion even if earlier opinion was erroneous. --

7. Learned Counsel for the Revenue supported the view taken by the Tribunal and submitted that it was not a case of mere change of opinion but of satisfaction of income escaping assessment. He submitted that it is not the case of the assessee that income had not escaped assessment nor was it the case of the assessee that procedure had not been followed. Reasons had been duly recorded and conveyed to the assessee and the same had nexus with the finding that the income had escaped assessment. The initiation of reassessment proceedings was not based on pre-existing law but on the assessment order for the subsequent year, though the said assessment order referred to the existing case law. The subsequent assessment facts coming to light in subsequent assessment year could validly form the basis for initiating reassessment proceedings, in view of Explanation 2 to Section 147 of the Act. The judgments relied upon, on behalf of the assessee, were distinguishable.

8. After hearing learned Counsel for the parties, we are of the view that no substantial question of law arises as the impugned judgment of the Tribunal is consistent with the settled law on the point. The power of reassessment can be validly exercised if satisfaction is arrived at after following due procedure that income had escaped assessment. Such satisfaction may involve change of opinion but was not at par with "mere change of opinion". If satisfaction is arrived at on the basis of any relevant material, such satisfaction cannot be assailed. In the present case, the Assessing Officer has referred to proceedings for the subsequent assessment years. In such a situation, the judgments relied upon on behalf of the assessee are clearly distinguishable. The law for exercise of power of reassessment has been authoritatively settled by the hon''ble Supreme court, inter alia, in A.L.A. Firm Vs. Commissioner of Income Tax, Madras, . The view of the Tribunal is consistent with the settled law. It is not disputed by learned Counsel for the assessee that the second proposed question is consequential and if reassessment is upheld, the levy of interest cannot be

objected to. Thus, no substantial question of law arises.

9. The appeal is dismissed.