Pawan Kumar JaIn Vs. Uoi and ors

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SooperKanoon Citation : sooperkanoon.com/1142268

Court : Delhi

Decided On : May-29-2014

Judge : Badar Durrez Ahmed

Appellant : Pawan Kumar Jain

Respondent : Uoi and ors

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

29. 05.2014 W.P.(C) 1797/2008 PAWAN KUMAR JAIN ..... Petitioner versus UOI & ORS ..... Respondents Advocates who appeared in this case: For the Petitioner : Dr Rakesh Gupta, Advocate with Ms Poonam Ahuja and Mr Rishabh Kapoor, Advocates For the Respondents : Ms Sonia Mathur, Advocate for UOI Mr Rohit Madan, Advocate for CIT CORAM: HON'BLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL) 1. In this writ petition the petitioner has made the following prayers:- WP(C) 1797/2008 (a) Declare the provisions of the Taxation Laws (Amendment Act, 2005 insofar as it relates to the retrospective amendments of section 28 and 80 HHC of the Income Tax Act, (Annexure No.1) as ultra vires the Constitution and liable to be struck down; and (b) Declare that the CBDT circular No.2 of 2002 unauthorised by insofar it relates to the levy of tax retrospectively on taxpayers by denying the legitimate deductions otherwise admissible.

2. (c) Restrain the respondents from giving effect to the retrospective amendments and CBDT circular against the petitioner by issuing a writ of prohibition for the purpose coupled with a writ of mandamus directing the respondents not to press for the recovery of the outstanding demand which has been created as a result of the order dated 28.12.2007 u/s 143(3)/148 of the Act passed by the respondent No.3 in respect assessment year 2000-01. (d) Issue a writ in the nature of certiorari or an order, quashing the impugned notice of demand dated 28.12.2007 u/s 156 of the Act as well as the impugned order dated 28.12.2007 u/s 143(3)/147 of the Act in respect assessment year 2000-01. (e) To issue a writ of prohibition or an order or a writ of mandamus directing the respondents not to initiate proceedings to recover the outstanding demand of Rs.30,51,886/- in respect assessment year 2000-01. (f) Pass any other order(s) as this Honble Court may deem to be fit and more appropriate in order to grant interim relief to the petitioner. It would be evident from prayer (a) itself that essentially the petitioner is challenging the retrospectivity of the amendments to Section 80 HHC brought about by the Taxation Laws (Amendment) Act, 2005 (hereinafter referred to as the said Act). This issue was considered by the Gujarat High Court in the case of Avani Exports & Ors. v. CIT:

348. ITR391which set aside the retrospectivity. The Gujarat High Court held as under:

26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the Tribunal, and at the same time, for depriving the benefit earlier granted to a class of the assessees whose assessments were still pending although such benefit will be available to the assessees whose assessments have already been concluded. In other words, in this type of substantive amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a fewer section of

the assesses.

27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of amendment and not in respect of earlier assessment years of the assessees whose export turnover is above Rs.10 crore. In other words, the retrospective amendment should not be detrimental to any of the assessees.

3. The said decision of the Gujarat High Court in Avani Exports (supra) has already been recognized and accepted by a Division Bench of this Court in the case of CIT vs. Jayanita : ITA No.48/2014 decided on 31.01.2014. Consequently, agreeing with the views expressed by the other Division Bench of this Court as also the views expressed by the Gujarat High Court, prayer (a) of the writ petition has to be allowed.

4. It is ordered accordingly.

5. In view of the fact that we have allowed prayer (a) to the extent that the amendment brought about by introducing the 2nd, 3rd and 4th proviso to Section 80 HHC (3) (c) is to operate only prospectively and not retrospectively, the other prayers which are in the nature of consequential reliefs also stand allowed.

6. With these directions the writ petition is allowed to the aforesaid extent. BADAR DURREZ AHMED, J.

SIDDHARTH MRIDUL, J.

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