Ritz Ltd. and Another Vs. Union of India and Others

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SooperKanoon Citation : sooperkanoon.com/350806

Court : Mumbai

Decided On : Mar-23-1990

Reported in : (1990)83CTR(Bom)177; [1990]184ITR599(Bom)

Judge : T.D. Sugla, J.

Acts : Income Tax Act, 1961 - Sections 28, 120, 143(3), 144A, 144B, 263 and 263(1)

Appeal No. : Writ Petition No. 1067 of 1987

Appellant : Ritz Ltd. and Another

Respondent : Union of India and Others

Advocate for Pet/Ap. : Deokinandan, Adv.;K.M.L. Majele, Adv.

Judgement :
ORDER

--Applicabiality of Explanation (c) to s. 263 (1)

HELD

The insertionof words 'filed on or before or after the 1-6-1988' and ' and shall be deemed always to have extended' at two palces in the Explanation as well as the fact that insertion is made retrospective from the date onwhich the Explanation it self was inserted can all be given proper meaning if it is held that these words are to be read in the Explanation right from the date the Explanation itself was inserted. Thus, only in cases where action under s. 263 is taken after 1-6-1988, the merger of assessment order will be treated as confined to issues actually considered and decided in appeal in terms of the Explanation (c). The construction placed herein is based on sound logic, namely irrespective of the language in which the amendment provisions are couched, the amendment cannot be retrospective with effect from a date earlier to the date onwhicht he provision sought to be amended itself was brought on the statute book.

Income Tax Act 1961 s.263

Appeal (Tribunal)--POWER--Refusal to grant stay to reassessment proceedings--If the assessment are not allowed to be completed even after 20 years, the creditors who made confession will not be available--Tribunal justified in not granting the stay of the reassessment proce

HELD

The reopening of the assessments has been upheld by the Tribunal and is not subject of reference before this court. The assessments are, of course, set adie to be made afresh onthe ground that they suffered fromcertain procedural defects such as the confessional statements of the creditors were not made available to the petitioner and the petitioner did not have opportunity to make its say onthe subject. If the assessments are not allowed to be completed even now, i.e., after more than 20 years, and have to be completed after then or even more years, it is anybody's guess whether the persons who made confessions will be available for examination if necessary. The Tribunal was, therefore, justified, in not granting the stay of the reassessment proceedings. Moreover, in writ jurisdiction this court does not sit in appeal. It interferes only if the order challenged it without jurisdiction or patently wrong.

Income Tax Act 1961 s.254

Appeal (Tribunal)--POWER--Stay of reassessment proceeding--Pendency of reference before High Court--Powers of Tribunal are wide enough and carries with them all powers and duties incidental and necessary to make the exercise of these powers fully effective

HELD

It continues to have all these power which it was having during th pendency of appeal before it, even the disposal of appeal in case reference therefrom was pending before the High Court. CIT v. Bansi Dhar & Sons (1986) 157 ITR 665 (SC) and ITO v. M.K. Mohammed Kunhi (1969) 71 ITR 815 (SC) applied.

Income Tax Act 1961 s.254