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Commissioner of Income-tax-1 Vs. Income-tax Appellate Tribunal

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Court : Mumbai

Decided On : Jan-19-2009

Reported in : [2009]180TAXMAN578(Bom)

Judge : Ranjana Desai and; J.P. Devadhar, JJ.

Acts : Income Tax Act, 1961 - 36(1)

Appeal No. : Writ Petition No. 2892 of 2008

Appellant : Commissioner of Income-tax-1

Respondent : income-tax Appellate Tribunal

Advocate for Pet/Ap. : R.B. Upadhyay, Adv.

Disposition : Petition dismissed against department

Judgement :

J.P. Devadhar, J.

1. This writ petition is filed by the Commissioner of Income-tax to challenge the order passed by the ITAT on 3-7-2007 whereby the Misc. Application No. 360/2007 filed by the respondent No. 2 ('assessee' for short) has been allowed. By the said rectification order, a sentence in Para 15 of the original order passed by the Tribunal on 22-12-2006 has been substituted.

2. The assessment year involved herein is assessment year 1998-99.

3. In the assessment year 1998-99, the assessee had sought deduction of Rs. 1,60,83,071 under Section 36(1)(vii) of the Income-tax Act, 1961 ('the Act' for short) being the amount of bad debt which is written off as irrecoverable in the accounts of the assessee. The said sum of Rs. 1,60,83,071 included the lease rentals amounting to Rs. 92,09,480 which were taxed in the earlier years on accrual basis, but claimed to have become bad debts on account of the assessee being unable to recover the said amount.

4. By the assessment order dated 28-2-2001 the Assessing Officer disallowed the entire claim of the assessee in respect of bad debts written off by the assessee.

5. On appeal filed by the assessee, the CIT (A) upheld the disallowance of Rs. 52,02,173 and allowed the claim only to the extent of Rs. 1,08,80,898. The said amount of Rs. 1,08,80,898 included the amount of lease rent taxed in the year amounting to Rs. 92,09,480 which was held to have become bad debt as irrecoverable.

6. Being aggrieved by the aforesaid order, both the assessee as well as the revenue filed appeals before the IT AT. By its order dated 22-12-2006 the Tribunal restored the issue relating to the allowance of bad debt of lease rentals amounting to Rs. 92,09,480. The Tribunal while restoring the matter to the file of the Assessing Officer observed in paragraph 15 of its Judgment as follows:.The learned Assessing Officer shall however be entitled to assess if any part of the alleged lease rentals is found to be in the nature of income accruing to the assessee on some other basis than lease rentals....

7. The assessee filed a Misc. Application seeking rectification of the order dated 22-12-2006 inter alia on the ground that the issue before the Tribunal was not relating to assessing the amount of Rs. 92,09,480 as income but the issue was whether the said amount of Rs. 92,09,480 which was already taxed in the earlier years was liable to be deducted on account of the said amount becoming irrecoverable and, hence, a bad debt. Therefore, according to the assessee, the aforesaid direction contained in para 15 of the Judgment was uncalled for. The

Tribunal agreed with the contention of the assessee and accordingly allowed the Miscellaneous Application by substituting the aforesaid sentence as follows:.The learned Assessing Officer shall verify from the records, whether lease rent of Rs. 92,09,480 has been included as income of the assessee in the earlier years and in case the same has been included, but written off during the year under consideration the assessee shall be entitled to deduction under Section 36(1)(vii) of the Income-tax Act....

8. Challenging the aforesaid order, the present petition is filed. Mr. Upadhyay, learned Counsel appearing on behalf of the revenue contended that the decision of the Tribunal in allowing the Misc. Application amounted to reviewing the original order under the garb of rectification of mistake when there was not error apparent on the face of the record. He submitted that once an order is passed, the Tribunal becomes functus officio and the Tribunal has no jurisdiction to modify its own order in the garb of rectification.

9. We see no merit in the aforesaid contention raised on behalf of the revenue. As rightly held by the Tribunal, the question before the Tribunal was whether the amount of Rs. 92,09,480 which was already taxed on accrual basis in the earlier assessment years could be allowed as deduction under Section 36(1)(vii) of the Act on the ground that the said amounts had become bad and the assessee has written off the said amount in its accounts as not recoverable. Thus, the question before the Tribunal was not regarding the taxability of Rs. 92,09,480 and, therefore, there was no question of the assessing the said amount as lease rental or otherwise in assessment year 1998-99. It is not in dispute that the amount of Rs. 92,09,480 was not the income earned in assessment year 1998-99. In these circumstances, the direction contained in para 15 of the original order dated 22-12-2006 regarding the assessment of Rs. 92,09,480 as lease rental or otherwise was ex facie erroneous and contrary to the facts on record and, therefore, the Tribunal was justified in rectifying the apparent error on the face of the record. In such case, the rectification carried out by the Tribunal cannot be said to be in the nature of review.

10. For all the aforesaid reasons, we see no merit in the petition and the same is hereby dismissed.

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