Cit Vs. Aziz Ahmad

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Court : Allahabad

Decided On : Sep-22-2004

Reported in : [2005]145TAXMAN542(All)

Appeal No. : IT Reference No. 200 of 1984 22 September 2004

Appellant : Cit

Respondent : Aziz Ahmad

Advocate for Def. : Sri. M.C. Gupta

Advocate for Pet/Ap. : A.N. Mahajan *for the Revenue*. M.C. Gupta *for the Assessee*.

Judgement :

1. The Income Tax Appellate Tribunal, Delhi, has referred the following question of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for opinion to this court:

'Whether on the facts and in the circumstances of the case the Appellate Assistant Commissioner was competent to entertain the appeals of the assessee for the years under consideration filed against the chargeability of interest under sections 139 to 217 of the Income Tax Act, 1961?'

2. Briefly stated the facts giving rise to the present reference are as follows:

The present reference relates to the assessment years 1974-75 to 1977-78. Aziz Ahmad and Jamil Ahmad are individuals whereas M/s. Aziz Ahmad Jamil Ahmad is a registered firm. The Income Tax Officer passed the assessment orders in respect of each of the aforementioned persons for the years under consideration and directed for charging of interest in the Form INS- 150. The respondents took up the matter in appeal in which they also challenged the levy and demand of interest. The Appellate Assistant Commissioner deleted the interest. Feeling aggrieved the revenue preferred separate appeal before the Tribunal. The Tribunal had dismissed the appeals filed by the revenue by following the Full Bench decision of this court in CIT v. Geeta Ram Kali Ram : [1980]121ITR708(All) .

3. We have heard Sri A.N. Mahajan, learned standing counsel for the revenue and Sri M.C. Gupta, learned counsel for the respondents.

4. The matter has now been set at rest by the Hon'ble Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. v. CIT : [1986]160ITR961(SC) in which the Apex Court has held that the levy of interest is a part of the process of assessment and it is open to an assessee to dispute the levy in appeal provided the limits himself to the ground that he is not liable to the levy at all.

5. Following the aforesaid decision, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. However, there shall be no order as to costs.