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Court : Allahabad

Decided On : Aug-04-2004

Reported in : [2005]142TAXMAN355(All)

Appeal No. : Civil Misc. Writ Petition No. 588 of 1997 4 August 2004

Appellant : Ashok Kumar Goyal

Respondent : income Tax Settlement Commission

Advocate for Pet/Ap. : R.S. Agarwal *for the Assessee* A.N. Mahajan *for the Revenue.*

Judgement :
ORDER

By means of present writ petition filed under article 226 of the Constitution of India, the petitioner seeks a writ order or direction in the nature of certiorari calling for the records of the case and quashing the order dated 21-3-1997 passed by the Income Tax Settlement Commission, New Delhi, respondent No. 1 filed as Annexure 1 to the writ petition and other consequential reliefs.

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

The petitioner is an individual. The petitioner, according to him is engaged in the business of job work of manufacture of silver chains upon orders received from customers. He had 536 kilograms (net) of silver which he had sold during the

financial year 1992-93 for a total sum of Rs. 41,78,937. According to the petitioner, he had acquired the silver over a period of years at total cost of Rs. 30,43,711 which resulted in net profit of Rs. 11,35,226. The income-tax authorities took certain proceedings, whereupon the petitioner approached the Income Tax Settlement Commission, New Delhi under provisions of section 245C of the Income Tax Act, hereinafter referred to as the Act. After giving opportunity of hearing to the petitioner as also the Income Tax department, the Income Tax Settlement Commission, by the impugned order had held that the profit arising out of the sale of silver in question should be assessed as business profit for the assessment year 1993-94 as silver was stock-in-trade.

3. We have heard Shri R.S. Agarwal, learned counsel for the petitioner and Shri A.N. Mahajan, learned standing counsel for the revenue. Shri A.N. Mahajan, learned counsel for the revenue states that in spite of best efforts, counter affidavit could not be filed as nobody has come from the department and he is prepared to argue the case without counter affidavit.

4. Learned counsel for the petitioner submitted that as the petitioner was doing only job work of silver chain, he was only charging the labour charges and was not indulging in sale of silver. Thus silver in question was his capital asset and not stock-in-trade or raw-material. Therefore, the profit, if any, arising out of the sale of silver could have either been assessed as capital gains, either short term or long term capital gains and not as business profit. From the perusal of the order of the Settlement Commission, it appears that the Commission has found that the petitioner was getting readymade silver chains manufactured by him which he exchanged for silver by other silversmiths. This position was conceded by Neeraj Jain, a member of the association of persons which carried on the business in the name of M/s. Ashok Kumar Goyal and others. The Commissioner, further found that the petitioner admittedly keep certain amount of stock of silver chains in anticipation for the orders of Majoori Work, the silver is required by the petitioner for his business either as stock-in-trade or raw-material. It had further found that the silver has been purchased at least partly out of fund kept for the purposes of business.

5. In view of the aforementioned findings of the fact recorded by the Commission which are based on appreciation of evidence and material on record, irresistible conclusion is that the silver was either stock in trade or raw-material of the petitioner and by no stretch of imagination, it can be treated as capital asset. Thus there is no infirmity in the order which require any interference by this court under article 226 of the Constitution of India.

6. The writ petition lacks merits and is, accordingly, dismissed in limine.

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