

Navneet Vs. Cit

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Court : Madhya Pradesh

Decided On : Oct-04-2004

Reported in : [2005]142TAXMAN483(MP)

Appeal No. : IT Reference No. 25 of 1996 4 October 2004

Appellant : Navneet

Respondent : Cit

Advocate for Pet/Ap. : G.M. Chafekar and Sarda *for the Assessee R.L. Jain, for the Revenue*

Judgement :
ORDER

Sapre, J.

This is a reference made under section 256(1) of the Income Tax Act at the instance of assessee arising out of the order of Tribunal dated 30-5-1986, passed in ITA/358/Ind./1983 to answer following two questions of law said to arise out of the order of the Tribunal

'1. Whether the Tribunal has erred in law in ignoring the objection in regard to the maintainability of appeal and whether the Tribunal has erred in accepting the fresh Memorandum of appeal presented beyond the period of limitation and deciding the

appeal on merits ?

2. Whether the Tribunal has erred in reaching the conclusion about deemed concealment of income to the extent of Rs. 77,707 in the facts and circumstances of the case ?'

2. Heard Shri GM Chafekar, learned senior counsel with Shri Sarda, learned counsel for the applicant and Shri R..L. Jam, learned counsel for non-applicant.

3. So far as question No. 1 is concerned, we do not find any merit in the same. In other words, it is difficult to answer the said question in favour of assessee. It is for the reason that even as per the statement of case drawn by the Tribunal it is noticed that the assessee (who was respondent) in an appeal filed by the revenue did not raise any specific objection in regard to tenability of the appeal on the ground of its being barred by limitation. in this view of the matter and in the light of what the statement of case records, we cannot answer the question No. 1 in assessee's favour.

4. But that apart and even otherwise, the question cannot otherwise be answered on merits in favour of assessee. It will be too technical to dismiss the appeal on the ground posed in the question. It is not in dispute that the original appeal filed by the revenue before Tribunal was within time. However, since it required some amendment in the grounds of appeal and hence, revised memo of appeal containing more suitable/proper grounds was submitted. It is this later amended submission of memo of appeal, which was being made basis for holding that appeal is taken to have been filed by the revenue on the date when the amended memo of appeal was filed and not when the original memo of appeal was filed.

5. In our considered opinion, we hold that the appeal filed by the revenue is within limitation and could not have been dismissed as being barred by limitation. In other words, merely because the amended memo of appeal was filed after some time, when taken on record, relate back to the date of original filing of the appeal and not taken to have been filed on the date of its filing. As observed supra, it is not a case where original filing itself was beyond limitation. Had it been so then position would have been different. Rule 12 of the Income-tax (Appellate Tribunal)

Rules, 1963 also empowers the Tribunal to allow the appellant to amend the memo of appeal. It is under this Rule, the appellant (revenue) did submit the amended memo of appeal. In this view of the matter, the Tribunal was perfectly justified in entertaining the appeal and deciding the same on merits.

6. Coming to the question No. 2 the question arose before the assessing officer as to what is the true nature of one entry for Rs. 77,707 appearing in the books of account for the year in question (1974-75). In substance, assessing officer was of the view that this entry pertained to total depreciation claimed on trucks in the earlier years and the same having been written off this year (1974-75), the same could not be used for deduction out of the total income as expenditure. In other words in the opinion of assessing officer, the assessee having used this entry for claiming benefit of deduction has rendered himself liable for payment of penalty within the meaning of section 271(1)(c) Explanation 1 as it had its application to the case being a deemed income. The Tribunal upheld the penalty imposed by assessing officer and held that a case under section 271(1)(c) is made out.

7. In our opinion, from the facts mentioned in the statement of case, we are unable to subscribe to the reasoning assigned by the Tribunal while holding the case of penalty being made out under section 271(1)(c) Explanation. In our opinion, it was essentially a case of complex accounting wherein a question arose as to the true nature of one entry. It was a debatable issue and the same was not accepted by assessing officer. In our opinion, it could not be termed as material concealment on the part of assessee so far as the entry in question was concerned. On being noticed, the assessee reversed the entry and paid the tax after adjusting in his total income. In other words, the benefit of the said entry was not availed of. In our humble view the issue in question did not attract the rigour of section 271(1)(c) Explanation nor did it amount to concealment within the meaning of section. In any event, the explanation offered by assessee deserves to be accepted.

8. We, therefore, answer the reference, i.e., question No. 2 in favour of assessee and against the revenue. In other words, we hold that Tribunal erred in reaching a conclusion about deemed concealment of income to the extent of Rs. 77,707.

