

Cit Vs. Gupta Textiles

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Court : Madhya Pradesh

Decided On : Nov-04-2004

Reported in : [2005]144TAXMAN502(MP)

Appeal No. : ITA No. 122 of 1999 04 November 2004

Appellant : Cit

Respondent : Gupta Textiles

Advocate for Pet/Ap. : Mr. R.L. Jain with Ku. V. Mandlik, *for the Appellant* Mr. Sarda, *for the Respondent*

Judgement :

A.M. Sapre, J.

This is an appeal filed by revenue (CIT) under section 260A of the Income Tax Act against an order dated 21-04-1999, passed by ITAT in ITA No. 512/Ind/95.

2. Heard Shri R.L. Jain, learned senior counsel with Ku~ V. Mandlik, learned counbel for the revenue and Shri Sarda, learned counsel for the assessee.

3. Having heard learned counsel for the parties and having perused record of the case, we are of the view that appeal has no substance. In other words, we have formed an opinion that the view taken by the Tribunal is in accord with the settled view on the issue already taken by several High Courts and hence, it does not call

for any interference in this appeal.

4. The issue in substance that arose before the taxing authorities was in relation to powers of assessing officer while passing the order under section 143(1)(a) of the Income Tax Act. In this case, assessee filed a return as firm. However, in exercise of powers conferred under section 143(1)(a), the assessing officer treated the assessee as AOP and sent them intimation for being assessed as AOP in place of Firm. It is essentially this question which was gone into upto Tribunal. By impugned order, the Tribunal inter alia held that while exercising the powers under section 143(1)(a) of the Act, the assessing officer can not change the status of assessee to his detriment. It was held that such change does not amount of prima facie adjustment within the meaning of section 143(1)(a). In other words, it was not an adjustment which could be done on the basis of the return filed by the assessee. In this view of the matter, the Tribunal while restoring the status of assessee as firm directed the assessing officer to assess the assessee in their capacity as firm and not in their capacity as AOP as mentioned in intimation sent under section 143(1)(a) *ibid*.

5. We respectfully concur with the view taken by the Tribunal referred *supra*. Indeed in our opinion, it is in accord with the view taken by judicial authorities. We may usefully quote one authority of Kerala High Court in the case of CIT v. K.V. Manak Ram and Company 160 Taxation 311, : [2000]245ITR353(Ker) . In this case, the learned Chief Justice Hon'ble Arijit Pasayat (as his Lordship then was), examined the scope and ambit of powers under section 143(1)(a) *ibid* and held while concluding their decision as follows

'That clearly brings about the distinction between an order of assessment and a notice of demand. As indicated above, intimation under section 143(1)(a) is deemed to be the letter. Under section 246 also, a clear distinction is made between intimation and an order of assessment.

The Tribunal was, therefore, justified in holding that the change of status as done by the assessing officer was impermissible under section 143(1)(a) of the Act.'

We respectfully follow the aforesaid view of Kerala High Court. In our opinion, the view so taken is completely in accordance with the object that lies behind section 143(1)(a). In other words, the assessing officer has no jurisdiction to change the status of assessee while exercising the powers under section 143(1)(a) to his detriment.

6. In this view of the matter, the appeal has no merit. It is accordingly dismissed resulting in upholding of the order passed by Tribunal.

No costs.

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