

B. R. Engineering Co. Vs. Assistant Commissioner of

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SooperKanoon Citation : sooperkanoon.com/69306

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Dec-24-1997

Appellant : B. R. Engineering Co.

Respondent : Assistant Commissioner of

Judgement :

1.We have heard both the parties. The learned counsel for the assessee submitted that in this case the learned CIT(A) had called for a remand report from the Assessing Officer (AO in short) which she has mentioned at pages 25 to 27 of her order. He also submitted that her order in para 49 makes it clear that she had received one more report other than the one mentioned in para 48 of her order i.e., which is dt. 24th September, 1997. However, no opportunity was given to the assessee to give any clarification or to rebut whatever might have been alleged in these reports. In fact, even a copy of those remand reports were not given to the assessee. He further submitted that the last date of hearing given by the AO to the assessee was 25th July, 1997 whereas the appellate order mentions the date 24th September, 1997 as the date of the forwarding note by the Dy. CIT to the CIT(A). He again submitted that this clearly shows that the learned CIT(A) passed the order against the principles of natural justice and is contrary to the law laid down by the Hon'ble Supreme Court in the case of N. Chokalingam & M. Meyyappan v. CIT (1963) 48 ITR 34 (SC). In this view of the matter he requested that the matter may be restored to the file of the AO who may examine the matter afresh and decide the issue after giving the assessee a reasonable opportunity of explaining and clarifying on those points which were collected by him and reported by him to

the learned CIT(A) without giving the assessee an opportunity of rebutting them.

2. The learned departmental representative claimed that the assessment order as well as the appellate orders were fully justified and submitted that the assessee was making this request to avail of the opportunity to make declarations under the VDIS (Voluntary Disclosure of Income Scheme, 1997).

3. The learned counsel for the assessee in his rejoinder submitted that although he had argued on the basis of violations of the principles of natural justice yet there was nothing wrong in his request even if it was on account of VDIS. He clarified that this information appears to have been collected by the Departmental Representative from the assessee's application to the Tribunal for early fixation of the appeal on which the Hon'ble Vice President of Tribunal has ordered that the appeal may be taken for hearing out of turn. He has also filed before us a photocopy of a report appearing in the "Economic Times" dt. 19th December, 1997 according to which the Revenue Secretary Sri N. K. Singh had urged the CIT(A) to set aside the assessments if there are grounds to do so before 31st December, 1997 so that the assessees can declare income under the VDIS.4. We have carefully considered the rival submissions. In view of what has been mentioned above, we are unable to agree to the submissions of the learned Departmental Representative. On the other hand, we find force in the submissions of the learned counsel for the assessee which arguments are supported by the ratio of the decision of a Supreme Court judgment (supra) as well as the declaration of policy of the Government by the Revenue Secretary.

5. In these circumstances, we are of opinion that it would be proper in the interest of justice if the matter is restored to the file of the AO with the directions to give the assessee a fresh opportunity to explain its case, as suggested by the Dy. CIT to the learned CIT(A) and mentioned in para 50 of her order.

6. In the result, while the assessment order is set aside to be framed afresh according to law for statistical purposes, the appeal may be treated as partly allowed.