

Commissioner of Income-tax Vs. Income-tax Appellate Tribunal

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Court : Delhi

Decided On : May-02-2000

Reported in : [2000]112TAXMAN355(Delhi)

Appeal No. : Civil Writ Petition No. 5591 of 1999 2 May 2000

Appellant : Commissioner of Income-tax

Respondent : income-tax Appellate Tribunal

Advocate for Pet/Ap. : Sanjiv Khann; and Ms. Prem Lata Bansal, for the Petitione; R.C. Pandey, for the Responden

Judgement :

ORDER

The point raised in this writ petition is fully covered by a decision of this court in CIT v. Arvind Construction Co. (P.) Ltd. (1992) 193 ITR 330. The controversy pertains to the assessment Year 1982-83. Briefly the facts are that respondent No. 2, Delhi Automobiles Limited, claims that Rs. 1 crore received on account of transfer of its rights in a hotel project is capital receipt and not taxable. The case of the revenue was that it is revenue receipt and even if it was capital receipt, it was liable to be taxed as short-term capital gain. When the matter went in appeal before the Tribunal, the majority of the members of the Tribunal ordered that the amount was not taxable.

2. The appeal before the Tribunal was disposed of on 31-12-1991. The order was received in the office of the Commissioner, who had the jurisdiction over the assessee, on 12-10-1994. It is only the Commissioner who could file a reference application under section 256(1) of the Income Tax Act, 1961 Income Tax Act. The application was accordingly filed by the Commissioner within the prescribed time of sixty days. However, the Tribunal took the view that the period of limitation commenced from 24-1-1992, when a copy of the order was served on Commissioner Central-1 and for that reason the application under section 256(1) was barred by limitation. Thus the controversy in the present petition is whether the period of limitation would commence from service of the order on the concerned Commissioner who has jurisdiction over the assessed or it will commence from service of the order on the Commissioner Central-1, who did not have jurisdiction over the assessee. This precise question was decided by this court in Arvind Construction Co. (R) Ltd.'s case (supra). In that case the order under section 256(1) had been served on the Chief Commissioner. Thereafter the Commissioner had filed an application under section 256(2) and it was contended by the assessed that the date of service on the Chief Commissioner would be the starting point of the period of limitation. On the correct interpretation of section 256(2) which is in pari materia with the provisions of 256(1) this court came to the conclusion vide the said judgment dated 24-1-1991 that what was material was the service on the Commissioner concerned and not the service on Chief Commissioner. It is the Commissioner concerned who alone has the jurisdiction to file application and it is imperative that it is he who should be served with a copy of order either under section 254 or 256(1). We are in respectful agreement with the said decision of this Court.

3. Accordingly, the impugned order dated 2-4-1996 of the Tribunal dismissing the application under section 256(1) on the ground of limitation is hereby set aside. The matter is remanded back to the Tribunal for decision of the application (RA No. 1153 (Delhi) of 1994) under section 256(1) on merits.

4. The writ petition is disposed of with no order as to costs.