Rakesh Kalia Vs. Ito

Rakesh Kalia Vs. Ito

SooperKanoon Citation : sooperkanoon.com/710022

Court : Delhi

Decided On : Jan-09-2001

Reported in : (2001)71TTJ(Del)438

Appeal No. : ITA No. 4874/Del/of 1996 & 433/Del/of 1997 9 January 2001 A.Y. 1992-93

Appellant : Rakesh Kalia

Respondent : ito

Advocate for Pet/Ap. : R. Santhanam,for the assessed; S.P. Jain, for the Revenu

Judgement :
ORDER

V. Dongzathang, P.

These appeals of the assessed are directed against the orders of the Commissioner (Appeals) on quantum as well as on penalty under section 271(1)(c) for the assessment year 1992-93.

2. The assessed in this case derived income from salary, meeting fee and consultancy. On scrutiny of the details of the documents filed along with the return of income, the assessing officer found that during the year the assessed made a deposit of Rs. 2,55,000 with M/s Melloon Engineers (P) Ltd. The assessed explained that the said amount was received from the NRE account during the

Immunity Scheme, 1991, and declaration under the remittance in Foreign Exchange Scheme, 1991, duly verified and issued under the stamp and signature of the Bank Manager, State Bank of India, Race Course Road, Bangalore was also annexed with the return of income. In order to verify the genuineness of the declaration, a reference was made to the State Bank of India, Race Course Road, Bangalore, and in confirmation the Chief Manager confirmed that a demand draft bearing No. 768737, dated 26-1-1992 was issued the bank for the (sic) said sum. But it was also verified by them that the fund had come from resident depositor's account rather than from NRE account. The assessing officer, thereforee, held that the amount represented the concealed income of the assessed and assessed the same accordingly. He also initiated penalty proceedings under section 271(1)(c) of the Act.

3. Aggrieved by the said order, the assessed took up the matter in appeal before the Commissioner (Appeals). The learned Commissioner (Appeals), however, upheld the order of the assessing officer on the reasoning that the assessed cannot claim immunity as the case of the assessed is not applicable to the Immunity Scheme declared by the Government. It was further found by him that the claim of gift from the person who initially gave the amount to the assessed cannot be accepted because the identity of the donor was never proved and no gift-tax return was filed. He accordingly upheld the addition and also the penalty imposed by the assessing officer.

4. The assessed is still aggrieved and has come up in appeal before the Tribunal. Shri K. Santhanam the learned authorised representative vehemently objected to the order of the Commissioner (Appeals). According to him the assessed in this case received the amount from the NRE account as per the Immunity Scheme, 1991. The genuineness of the claim was duly certified by the bank and the same was filed along with the return of income. If the assessing officer made further enquiry and found any material which is prejudicial to the assessed, the assessed should have been given reasonable opportunity to explain. The assessing officer in this case not only made enquiry at the bank of the assessed but utilised the evidence collected by him to hold against the assessed without giving reasonable opportunity to rebut the same. In such a case, the assessed should be given a

reasonable opportunity to rebut the evidence on the basis of the information collected at his back.

5. Secondly, it is submitted that according to the assessing officer himself as per the certificate said to have been obtained from the State Bank of India, Race Course Road, Bangalore, the fund came from a resident depositor's account. In such a case also, it cannot be the income of the assessed and the same has to be assessed in the hands of the account-holder from whose account the amount was transferred to the assessed. The assessing officer also should have given a definite finding as to whether the amount was in the nature of loan or a gift to the assessed. In any case, there is no scope for treating it as income of the assessed as the amount was originally deposited with the resident depositor's account. It will also be necessary to find out the details of the resident depositor who maintained the account and from whose account the amount was transferred. Without a clear finding on these aspects, it is not proper on the part of the assessing officer to hold it against the assessed.

6. On the other hand, Shri S.P. Jain, the learned Senior Departmental Representative supported the order of the assessing officer and the Commissioner (Appeals). From the detailed discussion in the assessment order and the appellate order of the Commissioner (Appeals), it is seen that (sic) enquiries have been made (sic) was made in the hands of the assessed as the same could not be explained. It is a clear case in which the Immunity Scheme of 1991 could not be applied. There, is thereforee, no reason to interfere with the order of the learned Commissioner (Appeals).

7. I have carefully considered the rival submissions in the light of the material on record. From the reading of the order of the assessing officer, it is seen that the assessing officer did a very good investigation in the matter and collected enough materials to hold against the assessed. However, before using these informations and evidence against the assessed, it is also necessary to give full opportunity to the assessed to rebut the evidence on the basis of the information collected behind the assessed. Furthermore the Chief Manager of State Bank of India, Race Course Road, Bangalore certified that the fund came out of the resident

depositor's account. In such a case, it is necessary to find out the genuineness of this resident depositor and also find out whether the amount is the undisclosed income of that resident depositor or of the assessed. It will be necessary also to find out whether it is in the nature of loan or gift. Since the assessed has not been given full opportunity to furnish the details and rebut the findings given by the assessing officer I consider it fair and reasonable to afford another opportunity to the assessed to substantiate the claims. The order of the learned Commissioner (Appeals) on this point is accordingly set aside and the issue is restored to the file of the assessing officer with a direction that he will redecide the issue in accordance with law after giving full opportunity to the assessed. The order is accordingly set aside on this issue.

8. With regard to the penalty also, it is seen that the penalty was entirely based on this amount. Since the question of assessability in the hands of the assessed is to be redecided, I set aside the order of the Commissioner (Appeals) on this point also and restore it to the file of the assessing officer with a direction that he will redecide this question of penalty also after recording his finding on the quantum assessment. Both the orders are accordingly set aside for fresh decision as indicated above.

9. In the result, the appeals shall be treated as allowed only for statistical purpose.