

R. Dalmia Vs. Cit

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Court : Delhi

Decided On : Aug-07-2001

Reported in : [2001]119TAXMAN547(Delhi)

Appeal No. : IT Reference No. 87 of 1983 7 August 2001

Appellant : R. Dalmia

Respondent : Cit

Advocate for Pet/Ap. : R.C. Pandey and; Ms. Prem Lata Bansal, for the Revenue

Judgement :

Arijit Pasayat, C.J.

Pursuant to direction given by this court under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act), following questions have been referred for opinion of this court by the Tribunal, Delhi Bench 'A :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the additional ground that the addition of Rs. 5,11,000 as income from undisclosed sources is covered by intangible additions of earlier years does not deserve to be entertained from the first time before the Appellate Assistant Commissioner and/or before the Tribunal ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in depriving the appellant of the benefit of intangible additions of earlier years to cover the addition of Rs. 5,11,000 as alleged income from undisclosed sources ?'

The dispute relates to the assessment year 1966-67.

2. Essentially the questions referred, which are to be answered, relate to the desirability of taking into account intangible additions in the past. By application of section 68 of the Act, additions were made by the Income Tax Officer relating to credits totalling to Rs. 5,11,000 in 12 names. Consequentially, the interest claimed on those amounts was disallowed. In appeal, stand of assessed was that relevant details were not examined, which was accepted. The Income Tax Officer pursuant to direction passed by the Appellate Assistant Commissioner examined the matter in detail and held that the bona fides of the claims were not established. The same was assailed before the Appellate Assistant Commissioner again. An alternative plea was taken that intangible additions in the past could take care of the cash credits. The Appellate Assistant Commissioner did not consider this stand, primarily on the ground that such plea was not taken earlier before the Appellate Assistant Commissioner and was also not taken before the assessing officer at any stage. Matter was challenged in appeal before the Tribunal, which upheld the views of the Income Tax Officer and the Appellate Assistant Commissioner. It was observed that a fresh plea has been taken for the first time after long passage of time and even before the Appellate Assistant Commissioner on the first occasion the plea was not taken and additionally before the Income Tax Officer when the matter was under examination pursuant to the order of remand. It cannot be an abstract proposition in law that intangible additions of previous year are to be taken note of while considering cash credit. On the facts of each case a specific plea and proof that there was any link between the intangible additions in the previous year and the cash credit has to be established, if that be a fact while tendering Explanationn regarding cash credit, must plainly state as a fact that the cash credit concerned did come out of the earlier intangible additions. Unless this is done, there is no requirement to make an enquiry regarding reasonableness of the Explanationn. It is not open to the assessed to offer two different

Explanationns by way of alternative pleas. Similar view was expressed by this court in CIT v. Kulwant Kaur : [1980]121ITR914(Delhi) . But if any unexplained cash credit can reasonably be related to the amount covered by the intangible addition made in the past, or in the very year, necessary set off is not impermissible. But as observed by the Supreme Court in CIT v. Manick Sons : [1969]74ITR1(SC) , it is not permissible to give credit for intangible additions, without indication of reasons as to why credit can be given. The question whether a particular cash credit can be covered by intangible addition is essentially one of fact. It is within the domain of taxing authorities to consider whether a particular cash credit, or unexplained expenditure or investment can reasonably be attributed to intangible additions, if materials are placed in that regard. No material was placed before the authority to substantiate the plea. Additionally second question does not arise out of the order of the Tribunal and consequentially the first question is really of academic interest. thereforee, we decline to answer the questions referred.

3. Reference is disposed of accordingly.

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