

Kamaljit Vs. Asstt. Cit

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Court : Delhi

Decided On : Aug-04-2005

Reported in : (2005)199CTR(Del)578; [2006]150TAXMAN191(Delhi)

Appeal No. : IT Appeal No. 198 of 2005 4 August, 2005

Appellant : Kamaljit

Respondent : Asstt. Cit

Advocate for Pet/Ap. : K.R. Manjani,;for the Appellant;R.D. Jolly & S.C. Sharma,;for the Responden

Judgement :

ORDER

By The Court

The return, filed by the appellant-assessed, had not yet culminated into an assessment order, when the assessing officer, issued a notice under section 148, inter alia, stating that the deposits made in the banks and the properties purchased by the assessed referred to in the notice gave rise to reasons that income invested in the same had escaped assessment. Pursuant to the said notice, the assessing officer concluded the assessment proceedings and found that an income of Rs. 18,94,490 had indeed escaped assessment. Aggrieved by the said order, the appellant went up in appeal before the Commissioner (Appeals), who reduced the amount that escaped assessment to Rs. 13,82,032. In

a further appeal before the Tribunal, the said amount was further reduced and the appeal disposed of by order dated 31-7-2003 with the following observation :

'We have carefully considered the material on record. On perusal of the order of the assessing officer it is found that the assessed could not explain the source of deposits. The learned Commissioner (Appeals) has rightly held that the investment in the deposits has remained unexplained. The learned Commissioner (Appeals) has also considered deduction of Rs. 17,27,625 in respect of opening bank balances. In our view, therefore, the order of learned Commissioner (Appeals) is fully justified and requires to be upheld. Hence, ground No. 2 is rejected.'

2. Aggrieved by the order passed by the Tribunal, the appellants preferred ITA No. 463/2003 before this Court, which was dismissed by this court by order dated 14-3-2005. One of the contentions that was urged before this court in that appeal was that the assessing officer could not take recourse to the provisions of section 148 of the Income Tax Act, 1961, because the proceedings before the assessing officer had not terminated as on the date of the issue of the notice under that provision. This Court, however, repelled that contention relying upon the provisions of section 147, Explanation 2(b) of the Income Tax Act and a Division Bench decision in CIT v. S.R. Fragrances Ltd. : [2004]270ITR560(Delhi) .

3. Mr. Manjani, submits that the appellant has taken recourse to the remedy by way of an appeal before the Supreme Court against the order of this court dated 14-3-2005. In addition, the appellant had already filed an application under section 254(2) of the Income Tax Act, 1961, for rectification of the order dated 31-7-2003. The said rectification application has now been dismissed by the Tribunal in terms of its order dated 29-10-2004. The Tribunal has relying upon the decision of this court in Deeksha Suri & Ors. v. ITAT : [1998]232ITR395(Delhi) , Karan & Co. v. ITAT (2002) 253 i TR 131 and CIT v. Vichra Construction (P) Ltd. : [2004]269ITR371(Delhi) , dismissed the said application holding that the appellant was in substance, seeking review of the order of Tribunal dated 31-7-2003, which was not permissible in proceedings under section 254 of the Act. The present appeal before us is directed against the said order of the Tribunal.

4. Having heard learned counsel for the appellant and Mr. Jolly for the revenue, we see no error of law in the view taken by the Tribunal. Mr. Manjani, however, argued that the Tribunal had not examined whether the reasons given in the notice under section 148 disclosed escapement of income from taxation. Any proceedings based on any such notice were, according to learned counsel, wholly impermissible under the scheme of the Act. We find no merit in that contention either. We say so for two precise reasons. Firstly, because the argument whether the proceedings initiated by the assessing officer in terms of the notice under section 148 could culminate in an order of assessment determining liability to pay tax at a high figure could and ought to have been raised in the proceedings before the authorities below and in the appeal which the appellant had preferred before this court against the order of the Tribunal dated 31-7-2003. Having failed to do so, such a plea cannot, in our opinion, be urged in the present proceedings, the scope whereof is limited to considering whether the order passed by the Tribunal under section 254 of the Act was justified.

5. Secondly, because the authorities below having concurrently come to the conclusion that there was escapement of income to the extent of Rs. 13,82,032, it is difficult to appreciate how the said finding which has attained finality can be brushed aside and the notice held to be bad at this belated stage. No substantial question of law arises for the consideration of this Court. The appeal accordingly fails and is hereby dismissed.