Cit Vs. Moonlight Builders and Developers

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SooperKanoon Citation : sooperkanoon.com/713285

Court : Delhi

Decided On : Jan-17-2007

Reported in : [2008]307ITR197(Delhi)

Judge : Madan B. Lokur and; V.B. Gupta, JJ.

Appellant : Cit

Respondent : Moonlight Builders and Developers

Disposition : Appeal dismissed

Judgement :
ORDER

1. These three appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 against an order dated 11 -11 -2005 pass ed by the Income Tax Appellate Tribunal, Delhi Bench A in IT A Nos. 631-633/ Delhi/2001 relevant for the assessment years 1991-92, 1997-98 and 1998-99.

2. A perusal of the impugned order shows that the Tribunal has merely followed its earlier orders passed on 23-9-2005 in ITA Nos. 1412,3995 and F 3996/Delhi/1999 for assessment years 1994-95, 1995-96, 1996-97 (Re: Moonlight Builders and Developers).

3. On 12-9-2006, learned counsel for the assessed brought to our notice that the orders passed by the Tribunal on 23-9-2005 were not challenged by the revenue

and if those orders were not challenged, there was no justification for the revenue to file the present appeals which merely relied upon the orders passed on 23-9-2005.

4. It was further pointed out by learned counsel for the assessed that the orders passed on 23-9-2005 followed orders passed by the Tribunal in respect of some other cases decided by the Tribunal on 14-7-2003 (Re: DLF Commercial Projects Corporation) and 14-6-2004 (Re: Sunrise Land &Housing; Company Limited). The orders passed in those cases were not challenged by the revenue.

5. On these facts being brought to our notice, we directed the respondent to file affidavit indicating the correct position.

6. An affidavit dated 12-1-2007 has been filed by Shri Kalyan Chand, Commissioner, Income-tax (A) in which he explains why the orders passed on 23-9-2005 were not challenged by the revenue. He also says that a decision has been taken to challenge the orders of 23-9-2005 and appeals will be filed, if necessary with an application for condensation of delay. Today the revenue has filed such appeals and challenged the order dated 23-9-2005. However, the fact remains that the primary orders dated 14-7-2003 and 14-6-2004 have admittedly not been challenged by the revenue. These primary orders having been accepted by the revenue, we see no reason why subsequent orders merely following these primary orders should be challenged by the revenue by filing appeals in this Court.

7. Our attention has been drawn to CIT v. ARG Security Printers (2003) 264 ITR 277 where a similar issue had arisen. A Division Bench of this Court relying upon Radhasoami Satsang v. CIT : [1992]193ITR321(SC) held that though the principle of rest judicata or estoppel by record does not apply in income-tax proceedings, yet for the sake of consistency and for the purpose of finality in all litigations, including litigation arising out of the fiscal statutes, earlier decisions on the same question should not be reopened unless some fresh facts are found in the subsequent year. It was observed that where a fundamental aspect permeating through different assessment years has been found as a fact, one way or the other, and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be

changed in a subsequent year. Reliance was also placed upon Union of India v. Satish Panalal Shah (2001) 249 ITR 22 wherein the Supreme Court had deprecated the practice of the revenue in accepting the correctness of a particular issue in one case and challenging its correctness in another case.

8. Precisely the same thing has happened insofar as these appeals are concerned. The revenue has accepted the primary orders passed by the Tribunal on 14-7-2003 and 14-6-2004 but has chosen to challenge the orders passed by the Tribunal in the present appeals which merely follow these primary orders. There is no reason given by the revenue for this pick and choose attitude or this attitude of accepting favorable orders in respect of one assessed but not accepting the same favorable order in respect of another assessed, without there being any distinction between their cases. Consequently, in view of the arbitrary manner of proceeding in the matter, we do not think that it will be proper or in the interest of justice to allow the revenue to seek to recover tax from one assessed while declining to recover tax from another assessed on identical facts.

9. Following the decisions of the Supreme Court as well as of his Court, we dismiss these appeals and hold that no substantial question of law has arisen for our consideration.