SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Cit Vs. Subrata Roy

Cit Vs. Subrata Roy

SooperKanoon Citation : sooperkanoon.com/713292

Court : Delhi

Decided On : Mar-20-2007

Reported in : [2007]292ITR627(Delhi)

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

Appellant : Cit

Respondent : Subrata Roy

Judgement :

C. M. No. 15992 of 2005 :

1. Allowed, subject to all just exceptions.

2. C. M. stands disposed of.

I. T. A. No. 1117 of 2005 :

3. The revenue seeks the framing of four substantial questions of law. We are of the view that two of the questions raised are substantial questions of law but two are not.

4. The first question urged is that the assessed ought to be taxed under sec corporation 28(iv) of the Income Tax Act, 1961, on account of perquisite benefits such as a house provided to him by the company, servants, chauffeur and gardener.

5. The assessing officer had imposed tax on these items but the appellate authorities disagreed with the view of the assessing officer.

6. It was held by the appellate authorities that the company had claimed a deduction on the expenses incurred in respect of these items. The deductions were disallowed and the company was taxed on that amount. Once the company has been taxed on that amount, the assessed cannot be taxed on the same amount again. Moreover, the benefits given to the assessed are personal to the assessed and the benefits are not intended to be for general use.

7. We find no error in the view expressed by the appellate authorities and are of the view that no substantial question of law arises in so far as this issue is concerned.

8. The second issue which arises for consideration is with regard to the salary payment of Rs. 60,000 to the wife of the assessed. According to the assessing officer, the wife of the assessed was not entitled to this amount but the appellate authorities found that she was a qualified professional who was looking after the running of Children Welfare Scheme for a long time. She had long experience and, thereforee, her income could not be clubbed with that of the assessed. We find no error in the view taken by the appellate authorities in this regard. We also find that the amount is really inconsequential and is relevant for only one assessment year. No substantial question of law arises for consideration.

9. In respect of the other two issues, we admit the appeal and frame the following substantial questions of law :

(1) Whether the Income Tax Appellate Tribunal was correct in law in allowing the assessed's claim of loss of Rs. 4.32 crores and not agreeing with the assessing officer who had not accepted the loan transaction in respect of purchase of unquoted shares by the assessed as a genuine transaction ?

(2) Whether the Income Tax Appellate Tribunal was correct in law in deleting the addition made under Section 2(24)(iv) of the Income- tax Act, 1961, by holding that the assessed has no substantial interest in the company from which he had taken

a loan at 18 per cent, per annum interest as against 24 per cent, per annum interest recoverable from others ?'

10. Paper books be filed in accordance with the High Court Rules.

11. It is made clear that since we are dealing with a large number of ITAs, the amounts may be different in each case but the substance of the questions remain the same.

12. This appeal will be taken up as the main case in this batch.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com