

Brahm Prakash Vs. Ito

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Court : Delhi

Decided On : May-17-2006

Reported in : [2006]155TAXMAN527(Delhi)

Appeal No. : WP(C) No. 8691 of 2006 17 May, 2006

Appellant : Brahm Prakash

Respondent : ito

Advocate for Def. : Mr. Sabharwal

Advocate for Pet/Ap. : P.N. Gupta,;for the Petitioner; Sanjeev Sabharwal,;for the Respondent

Judgement :

ORDER

1. Issue Rule. Mr. Sabharwal appears on behalf of the respondents. With consent this petition has been heard for final disposal.

2. The petitioner is aggrieved of an order dated 22-3-2006 whereby the assessing officer has assessed the taxable income of the petitioner at Rs. 39,45,430. The petitioner has also assailed a demand notice issued pursuant to the said assessment order, demanding a sum of Rs. 70,24,222 towards tax and interest under sections 234A, 234B and 234C of the Income Tax Act, 196 1. In addition,

the petitioner has challenged the validity of the penalty proceedings initiated under sections 271(1)(c) and 271(1)(b) of the Act in terms of a notice issued in that regard.

3. We have heard at some length learned counsel for the parties and perused the orders under challenge. It is common ground that the order of assessment impugned in this writ petition is appealable under section 246A of the Act before the prescribed appellate authority. It is also not in dispute that the respondent has not so far passed any order pursuant to the penalty notice issued to the petitioner. Even if any such order is made, the petitioner has an alternative remedy of filing an appeal against the penalty, if any, levied against him before the prescribed authority. In the circumstances, we see no real reason to interfere with the said proceedings at this stage.

4. Insofar as the impugned assessment order is concerned, the same being appealable, we see no reason why the petitioner should not resort to of that remedy which is equally efficacious.

5. Learned counsel for the petitioner, however, argued that the respondents may, pending disposal of the appeal, start demanding the payment of the amount of tax and interest determined against him. Any such recovery would, according to the learned counsel, be wholly unfair and unjust, keeping in view the peculiar facts and circumstances of the case, particularly, the order, dated 28-9-2001, passed by this court in the previous round of litigation.

6. We find merit in that submission. In our opinion interest of justice would be sufficiently served, if we direct the appellate authority to dispose of the appeal, which the petitioner may file within a specified period and stay the recovery of the amount demanded from the petitioner, in the meantime. Mr. Sabharwal, learned counsel for the respondents made a fair statement to the effect that in case an appeal is preferred by the petitioner within the time allowed by this Court, the respondents shall not raise any objection to the maintainability of the same on the ground of limitation.

7. In the circumstances, therefore, we make the following order:

(i) The petitioner may prefer an appeal against the impugned assessment order before the prescribed appellate authority within a period of four weeks from today.

(ii) In case the appeal is preferred within the time allowed the appellate authority shall hear and dispose of the same on merits treating the same to have been filed within the period of limitation prescribed for the purpose.

(iii) The appellate authority shall expedite the disposal of the appeal to ensure that final orders on the same are made within a period of six months from the date the appeal is presented.

(iv) For a period of six months from today or till such time the appeal is heard and disposed of whichever is earlier, the respondents shall not take any coercive steps for recovery of the amount of tax determined by them, pursuant to the impugned assessment orders.

(v) The respondents shall be free to conclude the penalty proceedings in terms of the notice issued to the petitioner but the validity of any such order shall be open to challenge by the petitioner before the appellate authority, if so advised.

8. The writ petition is disposed of, with the above observations, leaving the parties to bear their own costs.