Silver Impex Vs. Asstt. Cit

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SooperKanoon Citation : sooperkanoon.com/716155

Court : Delhi

Decided On : Jul-24-2007

Reported in : [2009]311ITR244(Delhi)

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

Appellant : Silver Impex

Respondent : Asstt. Cit

Disposition : Appeal dismissed against assessee

Judgement :

V.B. Gupta, J.

1. The assessee filed the present appeal under Section 260A of the Income Tax Act, 1961 (herein after referred to as 'Act') against the order dated 24-2-2006 passed by the Income Tax Appellate Tribunal (herein after referred to as Tribunal'), Delhi Bench 'E' in ITA No. 1966 (Del) of 2002 pertaining to the assessment year 1995-96.

2. The assessee filed his return of income on 31-10-1985 declaring 'Nil income'. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued on 22-10-1996. Assessee filed revised return on 11-12-1996 declaring gross total income of Rs. 60,60,858 and the income disclosed in the revised return

was also 'Nil'. The revised return was processed and deduction of Rs. 49,18,171 was allowed under Section 80HHC and the income of the assessee was assessed under Section 143(1)(a) of the Act at Rs. 11,42,867 and accordingly tax demand of Rs. 10,21,710 was raised.

3. This addition made under Section 143(1)(a) of the Act was confirmed by the Commissioner (Appeals) ('Commissioner (Appeals)') vide his order dated21-8-1998 in assessee's appeal.

4.The assessee thereafter filed further appeal and this addition was deleted by the Tribunal vide its order dated 16-8-2000 passed in ITA No. 4545 (Del) of 1998. The Tribunal held that while processing the return under Section 143(1)(a) of the Act, no disallowance can be made under Section 80HHC.

5. Meanwhile the assessment in this case was completed under Section 143(3) of the Act on 31-3-1998 whereby the income of the assessee was assessed at Rs. 11,42,686 by allowing deduction under Section 80HHC of Rs. 49,18,171 instead of Rs. 60,60,858 as claimed by the assessee. However, no demand was raised under Section 143(3) of the Act because the same has already been raised under Section 143(1)(a) of the Act.

6. The assessing officer in its order under Section 154/143(3) of the Act observed that by way of giving effect to the order dated 18-8-2000 passed by the Tribunal, the demand created under Section 143(1)(a) of the Act was revised to 'Nil'. Therefore, income-tax computation form prepared after passing of an order under Section 143(3) of the Act was required to be amended which would now create demand under Section 143(3) of the Act. Accordingly, opportunity was given to the assessee who submitted that deduction claim by him under Section 80HHC amounting to Rs. 60,60,858 has been allowed entirely by the Tribunal and as such the same should be allowed under Section 143(3) of the Act.

7. The assessing officer did not agree with the submissions of the assessee, as the Tribunal in its order has nowhere mentioned that the deduction claimed by the assessee under Section 80HHC amounting to Rs. 60,60,858 has been allowed entirely. It was further held by the assessing officer that the assessee has not

challenged before the Tribunal the computation of deduction under Section 80HHC during the processing of the return under Section 143(1)(a) of the Act.

8. The assessee challenged this computation before the Commissioner (Appeals) and Commissioner (Appeals) vide Order dated 21-8-1998 declined to interfere with the computation.

9. The assessee then filed an appeal against the order of Commissioner (Appeals), and vide impugned order, the Tribunal dismissed the appeal of assessee.

10. It has been contended by learned Counsel for the assessee that in the assessment order passed, there was no adjudication of claim under Section 80HHC as claimed in the revised return and as such it was the duty of the assessing officer to consider such a claim if he had started rectification proceedings under Section 154 of the Act and he could not restrict such action to the computation of income only for the purposes of raising a demand and after the Tribunal has passed the order, the assessing officer could only accept the claim of the assessee under Section 80HHC at Rs. 60,60,858.

11. The present appeal has arisen out of the order passed under Section 154 of the Act wherein the assessing officer in order to give effect to the order of the Tribunal has amended computation of income made under Section 143(3) of the Act. It is an admitted fact that the assessee did not challenge the order passed under Section 143(3) of the Act and now only when order under Section 154/143 has been passed, the assessee has challenged the same which in our opinion does not lie in the present proceedings since proceeding under Sections 143(3)and 154 of the Act a reseparate and independent.

Under these circumstances, we find no ground to differ with the reasoning given by the three income-tax authorities and as such, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

Accordingly, the present appeal filed by the assessee is not maintainable and the same is hereby dismissed.