T.O. Alias Vs. Assistant Commissioner of Income-tax and anr.

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Court : Kerala

Decided On : Jun-11-1998

Reported in : [1999]238ITR335(Ker)

Judge : P. Shanmugam, J.

Acts : Income-tax Act, 1961 - Sections 132, 158BC and 253(1)

Appeal No. : O.P. No. 8379 of 1998

Appellant : T.O. Alias

Respondent : Assistant Commissioner of Income-tax and anr.

Advocate for Def. : P.K.R. Menon, Senior Adv. and; N.R.K. Nair, Adv.

Advocate for Pet/Ap. : V.N. Achutha Kurup, Adv.

Judgement :

P. Shanmugam, J.

1. The petitioner challenges exhibits P-7, P-8 and P-10 orders. By exhibit P-7 order, the Assistant Commissioner of Income-tax modified the earlier assessment under Section 154 of the Income-tax Act, 1961. As against the said order, the petitioner preferred exhibit P-9 appeal to the Commissioner of Income-tax. By exhibit P-10 communication, the petitioner's appeal was returned with a request to

be presented before the Income-tax Appellate Tribunal and stating that the Commissioner of Income-tax was not competent. The original petition is filed against these orders.

2. It is seen from the exhibits that in the course of completion of the block assessment, a proposal was issued to the assesses to fix the cost of construction of a building at Rs. 18 lakhs and to tax the proportionate share of the difference as the undisclosed investment made by the assessee. In his reply dated April 16, 1997, the assessee requested to refer the matter to the valuation cell. Accordingly, the matter was referred to the executive engineer. As the report could not be obtained before the completion of the block assessment which was getting time barred on April 30, 1997, the cost of construction of the building was estimated at Rs. 18 lakhs as reported by the inspector. It was specifically mentioned in paragraph 13(a) of theblock assessment order dated April 29, 1997, that necessary modification will be made regarding the investment on the building on receipt of the report from the valuation cell. The Executive Engineer, Valuation Cell, Income-tax Department, Trivandrum had furnished his report fixing the total investment on the above building at Rs. 29,86,600 as against Rs. 10 lakhs admitted by the assessee and Rs. 18 lakhs adopted by the block assessment based on the inspector's report. The proposals were opposed by the petitioner. The Assistant Commissioner held that the proposal is only a substitution of the correct figures regarding the cost of construction on the basis of the report of the valuation cell against the estimated figure of the Inspector. In fact, it is the petitioner who had requested to refer the matter to the valuation cell. Therefore, the assessee's objection was overruled and the assessment order dated April 29, 1997, was modified. In pursuance of this order, exhibit P-8 demand was raised. In paragraph 8 of the notice, it was specifically stated that the petitioner will have a right of appeal before the Income-tax Appellate Tribunal. Without filing an appeal before the Tribunal, the petitioner preferred an appeal before the Commissioner of Income-tux. The Commissioner in his order exhibit P-10 has staled rightly, in my view, that the proceedings were initiated under Section 132 against the petitioner on April 30, 1996. Therefore, the jurisdiction over orders under Section 158BC passed in respect of searches before that date should go to the Tribunal in the light of Section 253(1)(b) of the Income-tax Act, 1961. Section 158BC is as follows

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'158BC. Where any search has been conducted under Section 132 or books of account, other documents or assets are requisitioned under Section 132A, in the case of any person, then,--

(a) the Assessing Officer shall-

(i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days ;

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under Clause (i) of Sub-section (1) of Section 142, setting forth his total income including the undisclosed income for the block period.'

Section 253 reads as follows :

'253. Appeals to the Appellate Tribunal--(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-

(a) an order passed by a Deputy Commissioner (Appeals) or, as the case may be, a Commissioner (Appeals) under Section 154, Section 250, Section 271, Section 271A or Section 272A ; or

(b) an order passed by an Assessing Officer under Clause (c) of Section 158BC, in respect of search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132A, after the 30th day of June, 1995, but before the 1st day of January 1997 ; or

(c) an order passed by a Commissioner under Section 263 or under Section 272A or an order passed by him under Section 154 amending his order under Section 263 or an order passed by a Chief Commissioner or a Director-General or a Director under Section 272A.

(2) The Commissioner may, if he objects to any order passed by a Deputy Commissioner (Appeals) or, as the case may be, a Commissioner (Appeals) under Section 154 or Section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.'

3. The Commissioner (Appeals) will not have jurisdiction on the action initiated prior to January 1, 1997. It is further noted that the petitioner had already preferred an appeal before the Tribunal against the assessment order dated April 29, 1997, wherein he has raised the question of valuation in ground No. 9. Therefore, it is always open to the petitioner to pursue his remedy before the same Tribunal where his appeal is pending.

4. In the light of the above, I do not find any illegality in the order of the Commissioner of Income-tax (Appeals). Hence, the original petition is dismissed. This is without prejudice to the right of the petitioner to move the appeal before the Tribunal.