Cit Vs. Peter Max Washylik

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Court : Gujarat

Decided On : Feb-03-2009

Reported in : (2009)221CTR(Guj)85

Judge : D.A. Mehta and; S.R. Brahmbhatt, JJ.

Acts : Income Tax Act, 1961 - Sections 256(1)

Appeal No. : Income Tax Reference No. 73 of 1999

Appellant : Cit

Respondent : Peter Max Washylik

Advocate for Pet/Ap. : Mauna M. Bhatt, Adv. for Applicant 1

Disposition : Reference answered in favour of assessee

Judgement :

D.A. Mehta, J.

1. Income-tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under Section 256(1) of the Income-tax Act, 1961 (the Act), at the instance of Revenue:

Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was right in law in upholding the Dy. Commissioner of Income-tax

(Appeals) order holding that the relief under the agreement for the avoidance of double taxation of income was available to the assessee and the assessee's income was not taxable under the Income-tax Act, 1961, in India?

2. Learned counsel appearing for the applicant-revenue has invited attention to order dated 15.06.2007 made by this Court in case of C.I.T. v. Heinrich Wetting, Income Tax Reference No. 77 of 1999, to submit that the present reference may be decided on the same lines and the matter be sent back for deciding afresh as done in the case of C.I.T. v. Heinrich Wetting (supra).

3. Though served, none appears on behalf of the respondent-assessee.

4. The Assessment Year in question is 1985-86. As can be seen from the impugned order of Tribunal dated 30.09.1998 vide Paragraph No. 5 the Tribunal has referred to its earlier order and the direction issued to the Assessing Officer to give benefit of DITR agreement entered into by Government of India with Government of U.K. after verifying the information indicating deduction of tax at source. The Tribunal has, after referring to the earlier order, confirmed the order made by the Deputy Commissioner of Income-tax (Appeals) granting relief to respondent-assessee.

5. On going through Paragraph No. 3 of the order dated 23.03.1990 made by the appellate authority it becomes clear that relief was granted to the assessee based on Assessment Order made by the Assessing Officer for Assessment Year 1984-85 after verification of the claim made by the assessee.

6. Thus, it appears that after the Tribunal passed an order in earlier round for earlier Assessment Year the matter has been verified by the Assessing Officer and the relief granted by the appellate authority is based on such fresh assessment order. Hence, not only there is no necessity to follow the earlier order made by this Court but there is no legal infirmity in the impugned order of the Tribunal. The Tribunal has confirmed the order made by Deputy Commissioner of Income-tax (Appeals) because the order of the appellate authority notes that the Assessment Order for Assessment Year 1984-85 is in compliance with directions of the Tribunal made in order for earlier assessment year after verification by the

Assessing Officer.

7. Accordingly, the question is answered in the affirmative i.e. in favour of the assessee and against the Revenue. The reference stands disposed of with no order as to costs.