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SooperKanoon Citation : sooperkanoon.com/748445

Court : Gujarat

Decided On : Feb-05-2004

Reported in : (2004)187CTR(Guj)526

Appeal No. : IT Ref. Nos. 282, 285 to 288, 292 & 294 of 1993, 278 & 286 of 1994 & 135 & 210 of 19

Appellant : Cit

Respondent : Bhanumati and Sons Trust

Advocate for Pet/Ap. : Manish R. Bhatt, Mrs. Mauna M. Bhatt, B.B. Naik & Tanvish U. Bhatt, *for the Revenue* Ketan H. Shah, *for the Assessee*

Judgement :
ORDER

Applicability of previous year of partner where assessing officer exercised discretion under section 176(1)

Catch Note:

The assessee is a partner of the firm who was having Samvat year as its previous year. The said firm was dissolved on 31-3-1983. In view of the discretion mentioned in section 176(1) the assessing officer assessed the firm for Samvat year 2038 ending on 15-11-1982 and also for subsequent period being from 16-4-1982 to 31-3-1983 both for assessment year 1983-84. Consequently, the assessee invoked section 3(1)(f) and his income was assessed for 1983-84 and 1984-85 for period from Samvat year 2038 ending on 15-11-1982 and from 16-11-1982 to 31-3-1983 respectively. The Commissioner invoking section 263 set aside the assessment of the assessee partner. The assessing officer having exercised the discretion permitted the firm to file returns for Samvat year 2038 and also for the subsequent period from 16-11-1982 to 31-3-1983, therefore, once the firm was allowed to file its returns for the assessment year 1983-84 in the aforesaid manner, there was no discretion either with the partners of the firm or with the assessing officer regarding determination of the previous year in respect of the assessee's share in income of the firm. The Tribunal was, therefore, right in applying the provisions of section 3(1)(f) and holding that the order passed by the assessing officer was not erroneous so as to warrant interference by the Commissioner under section 263

Ratio:

The assessing officer having exercised the discretion permitted the firm to file returns for Samvat year 2038 and also for the subsequent period from 16-11-1982, to 31-3-1983, therefore, once the firm was allowed to file its returns for the assessment year 1983-84 in the aforesaid manner, there was no discretion either with the partners of the firm or with the assessing officer regarding determination of the previous year in respect of the assessee's share in income of the firm. The Tribunal was, therefore, right in applying the provisions of section 3(1)(f) and holding that the order passed by the assessing officer was not erroneous so as to warrant interference by the Commissioner under section 263.

HELD

The provisions of section 3(1)(f) are mandatory-where the assessee is a partner in the firm and the firm has been assessed as such, the period determined as the previous year for the assessment of the income of the firm has also to be treated as the previous year for the assessee in respect of his share in the income of the firm. In case of dissolution of a firm, sub-section (1) of section 176, however, confers discretion upon the Income Tax Officer to assess income for a part of a year ending on the date of dissolution in addition to income of the previous year.

The assessing officer having exercised the discretion and permitted the firm to file returns for Samvat year 2038 and also for the subsequent period from 16-11-1982, to 31-3-1983, the firm was permitted to vary the previous year as contemplated by sub-section (4) of section 3. Once the firm was allowed to file its returns for the assessment year 1983-84 in the aforesaid manner, there was no discretion either with the partners of the firm or with the assessing officer regarding determination of the previous year in respect of the assessees' share in income of the firm and, therefore, the Tribunal was right in applying the provisions of section 3(1)(f) and holding that the order passed by the assessing officer was not erroneous so as to warrant interference by the Commissioner under section 263. A bare perusal of the reasoning and operative order of the Commissioner makes it clear that there is not a whisper about any prejudice having been caused to the revenue on account of the separate assessment made for the period 16-11-1982 to 31-3-1983. In view of the above discussion, the Tribunal was right in cancelling the order passed by the Commissioner under section 263 wherein he had held that the income for the period 16-11-1982 to 31-3-1983, is to be taxed in the assessment year 1984-85.

Case Law Analysis:

CIT v. Mckenzies Ltd. (1980) 121 ITR 458 (Bom), Biswanath Goenka v. CIT (1990) 189 ITR 687 (Cal), New Ambadi Estates (P) Ltd. v. CIT (1997) 228 ITR 141 (Ker) and CIT v. Greenham Estates (P) Ltd. (2002) 254 ITR 402 (Mad) concurred with.

Application:

Not to current assessment year.

Decision:

In favour of assessee.

Income Tax Act 1961 s.263

Income Tax Act 1961 s.176(1)

Revision under s. 263--ERRONEOUS AND PREJUDICIAL