

Goswami and Bros. Vs. Union of India and anr.

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Court : Rajasthan

Decided On : May-21-1997

Reported in : (1998)144CTR(Raj)336

Appeal No. : SB Civil Writ Petn. No. 2584 (defect) of 1996, now 2146 of 1996

Appellant : Goswami and Bros.

Respondent : Union of India and anr.

Judgement :

BY THE COURT :

In this petition prayer is made to quash the impugned Circular No. 737, dt. 23rd February, 1996 issued by the CBDT [published at (1996) 131 CTR (St.) 9], and the actions taken in pursuance thereof. The CBDT issued Circular No. 684, dt. 10th June, 1994 [published at (1994) 119 CTR (St.) 25] to explain the substance of the newly inserted provisions of s. 44AD of the IT Act, 1961 (for short 'the Act' hereinafter). The circular has been published in (1994) 119 CTR (St.) 25. In paras Nos. 31 to 31.7 at page 42, the meaning and scope of s. 44AD has been explained as under :

'31.3 The rate of 8 per cent is comprehensive. All deductions under ss. 30 to 38 including depreciation, will be deemed to have been already allowed and no further deduction will be allowed under these sections. The written down value will be calculated, where necessary, as if depreciation as applicable has been allowed. In the case of firms, the normal deductions to the extent allowed under cl. (b) of s. 40 will be allowed.

31.6 The scheme is optional. A system of rebuttal has been provided. A person can claim that his income in respect of the above mentioned business is lower than the specified estimate of income. In such a case, he must produce necessary evidence to prove his case. Such a case will be scrutinised for regular assessment under s. 143(3).

32.2 The estimated income is comprehensive. All deductions under ss. 30 to 38 including depreciation, will be deemed to have been already allowed and no further deduction will be allowed under these sections. The written down value will be calculated, where necessary, as if depreciation as applicable has been allowed. In the case of firms, the normal deductions to the extent allowed under cl. (b) of s. 40 will be allowed.'

A subsequent impugned Circular No. 737, dt. 23rd February, 1996 (supra) was issued by the CBDT. It has been mentioned in the circular that a doubt has been raised as to whether deduction on account of salary/interest to the partners of a firm shall be admissible from the income estimated in accordance with s. 44AD and s. 44AE of the Act. The doubt has primarily arisen because of the erroneous clarification given in paras 31.3 and 32.2 of Circular No. 684 dt. 10th June, 1994 (supra). The following lines appearing in paras 31.3 and 32.2 of Circular No. 684 dt. 10th June, 1994 were deleted by the subsequent Circular No. 737 dt. 23rd February, 1996.

'in the case of the firms, normal deduction to the extent allowed under cl. (b) of s. 40 will be allowed'.

Taking recourse to the Circular dt. 23rd February, 1996, the IT authorities have reopened the assessments against the petitioner and in some of the matters, have issued fresh assessment orders.

2. By the Finance Act, 1997, a proviso to sub-s. (2) of s. 44AD has been added giving retrospective operation w.e.f. 1st April, 1994 i.e., asst. yr. 1994-95 providing that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-s. (1) subject to the conditions and limits specified in cl. (b) of s. 40. In view of insertion of the proviso in the Finance Act to sub-s. (2) of s. 44AD and giving it retrospective operation from 1st April, 1994, the Circular No. 737 dt. 23rd February, 1996 deleting the words 'In the case of the firms, normal deduction to the extent allowed under cl. (b) of s. 40 will be allowed' is clearly erroneous and cannot be permitted to stand.

3. Accordingly, the petition is allowed, Circular No. 737 dt. 23rd February, 1996 as above is quashed. As a result of quashing of the Circular dt. 23rd February, 1996, now it will be incumbent on the ITO to pass fresh orders and take appropriate steps in the matter of reassessment of the petitioner in accordance with law treating the Circular dt. 23rd February, 1996 as above as non-existent.

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