

Cit Vs. Agro Engineers

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Court : Rajasthan

Decided On : Apr-10-2003

Reported in : [2003]130TAXMAN830(Raj)

Appeal No. : D.B. IT Appeal No. 5 of 1999 10 April 2003

Appellant : Cit

Respondent : Agro Engineers

Advocate for Pet/Ap. : J.K. Singhi and Anuroop Singhi, *for the Revenue*

Judgement :

ORDER

The appeal has been admitted on 9-4-2001 in terms of the following question :

'Whether ITAT was justified in not confirming the order of Commissioner (Appeals) who had set aside the order of assessment with the direction to give fresh opportunity to the assessee ?'

2. The relevant assessment year is 1990-91. The assessee has filed the return of income declaring income at Rs. 98,108. Thereafter notice under section 143(2) of the Income Tax Act was issued more than 10 times, but assessee did not respond to the notice. Thereafter the assessing officer has made the assessment order under section 144 of the Income Tax Act, 1961 and estimated the income of the assessee at Rs. 3,52,947 and apportioned it amongst the partners as referred in

the assessment order.

3. That assessment has been challenged before the Commissioner (Appeals). Commissioner (Appeals) has noticed that before framing the assessment under section 144 of the Act, proviso to sub-section (1) of section 144 has not been complied with. Therefore, he set-aside the order of the assessing officer and restored it back to the assessing officer with a direction to make a fresh assessment after affording opportunity to the assessee. Commissioner (Appeals) has also referred the decision of Calcutta High Court in the case of CIT v. Popular Electric Co. (P) Ltd. : [1993]203ITR630(Cal) wherein similar direction has been given by the Calcutta High Court, i.e., remitted the matter back to the assessing officer with a direction to make the fresh assessment on the basis of material on record and after giving opportunity to the assessee.

4. In appeal before the Tribunal, Tribunal has annulled the assessment holding that there is a statutory requirement under proviso to sub-section (1) of section 144 to give notice before estimating the income of the assessee under section 144 of the Act.

5. None appeared for the assessee. Heard learned counsel for the revenue Mr. Singhi.

6. The facts are not in dispute that 10 notices under section 143(2) of the Act were issued to the assessee and they were duly served. In spite of that, assessee did not respond to the notices, therefore, assessing officer framed the assessment under section 144 of the Act.

7. It is true that proviso to sub-section (1) of section 144 requires that before framing the assessment under section 144, an opportunity should be given to the assessee. As 10 notices under section 143(2) were issued to the assessee but in spite of service he did not respond. Though assessing officer has committed a mistake by not issuing the fresh notice for assessment under section 144 of the Act but that does not mean that assessee is not liable for the tax on its income. If in cases opportunity has not been given either required under statute or required under principles of natural justice, it does not make any difference but fact remains

that when the income has not been assessed properly, the only proper course is that income should be assessed properly and in accordance with law.

8. We agree with Commissioner (Appeals), he was justified in remitting the matter back to the assessing officer to make a fresh assessment after affording opportunity to the assessee for assessment under section 144 of the Act. Tribunal has committed error in annulling the assessment made by the assessing officer. If statutory requirement has not been complied with, direction can be given to make a fresh assessment after complying the provisions of section 144, before framing the fresh assessment.

9. Considering the submissions of Mr. Singhi, we set-aside the impugned order of Tribunal and restore the view taken by the Commissioner (Appeals). We direct the assessing officer to afford opportunity to the assessee before framing the fresh assessment under section 144 of the Act.

The appeal is accordingly allowed.

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