

Cit Vs. Ashok Taksali

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Court : Rajasthan

Decided On : Jul-08-2002

Reported in : [2002]124TAXMAN45(Raj)

Appeal No. : D.B. IT Appeal No. 47 of 1999 8 July 2002

Appellant : Cit

Respondent : Ashok Taksali

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

Judgement :

ORDER

The present appeal had been admitted on 10-7-2000 but no question was framed therefor, we have to consider three questions which have been proposed in Para H of the instant appeal which reads as under :

'1. Whether the learned Income Tax Appellate Tribunal was justified in holding itself that total income of assessee is below taxable limit then he was not obliged/ required to file return of income and as such the assessee's case was covered by section 139(1A) of the Act and thereby deleting additions ?

2. Whether the learned Income Tax Appellate Tribunal was justified in directing to allow the credit for TDS in block assessment when such income was not added in

the total income of assessee for block assessment period ?

3. Whether the order passed by the learned Income Tax Appellate Tribunal suffers from perversity, of law and facts ?'

2. A search and seizure operation was carried out under section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 27-9-1995 at the residential premises of the assessee situated at House No. 942, Chaura Rasta, Jaipur. During the search and seizure operation, various FDRs, cash and incriminating documents were found out and seized. Accordingly, a notice under section 158BC(a) was issued on 7-12-1995 to the assessee requiring him to file the return of income for the block period. The assessee had filed return for the said period, i.e., 1986-87 declaring his total income as nil. For the previous year, the assessing officer had treated the income of salary as income from other sources as no return was filed of that income. For that period, i.e., 1985-86, 1986-87 and 1989-90, the assessee has not filed return of income because he was having only income of salary in the light of provisions of section 139(1A) of the Act.

3. The assessing officer had assessed the salary income in the aforesaid block year.

4. The Tribunal has taken a view that the assessee is having income only from salary and from the salary income TDS has already been deducted, therefore, the assessee was not obliged to file return in view of the proviso to section 139(1A). The Tribunal has also held that when the issue of income of salary has been decided in favour of the assessee, the Tribunal decided issue of TDS amount in favour of the assessee.

5. Heard the learned counsels for the parties. If we read the questions referred above, the questions appear to be mis-conceived. In the first question, it is stated that the income of the assessee from salary is below taxable limit, the assessee was not obliged to file the return and the case of the assessee was covered by section 139(1A). The issue raised in the second question is whether the Tribunal was justified in directing to allow the credit for TDS in block assessment year when such income was not added in the total income of the assessee in the block

assessment period and in the third question whether the finding of the Tribunal was perverse.

6. Para 61 of the Tribunal's order reveals that the Tribunal has nowhere stated that the income of the assessee was below taxable limit. The Tribunal has referred to section 139(1A) in the context that if the income of the assessee is assessable only under the head 'Salary', then he need not file return. When the TDS has already been deducted from salary, that cannot be taxed again in the block assessment year.

Admittedly, the TDS has been deducted from the income of salary, there is nothing on record to show that the TDS amount has been taken back as refund by the assessee.

The learned counsel who appeared on behalf of the revenue has not stated that the amount of TDS has been refunded back to the assessee. Once the salary income of the block year has been taxed and TDS has been deducted, there is no question of holding that the income of the assessee is an undisclosed income for taxing it again in the block year after search.

When the Tribunal has excluded it and held that it cannot be taxed twice, there is no question of any accommodation of TDS against any other income when the salary income has not been taxed in that block year.

The Tribunal has wrongly held in favour of the assessee the issue of allowing the claim of TDS which has already been deducted from the income of salary and which has not been treated as undisclosed income of the assessee in block assessment.

In short, the Tribunal is right and justified in holding that from the income of salary of the assessee for the block year if TDS has been deducted and the same has not been refunded back to the assessee, there is no question to tax that income again when TDS has already been deducted. The salary income has been excluded from computing the tax, there is no question of accommodation of TDS amount against any other income of the assessee received as income other than

salary income.

With the above discussions, the appeal is disposed of.

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