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Court : Rajasthan

Decided On : Jul-30-2002

Reported in : (2002)177CTR(Raj)173

Appeal No. : DB IT Ref. No. 67 of 1986 30 July 2002 A.Y. 1982-83

Appellant : Associated Stone Industries

Respondent : Cit

Advocate for Pet/Ap. : R.S. Mehta with Ms. Preet Sharma, *for the Assessee* J.K. Singhi, *for the Revenue*

Judgement :

By the Court

On an application filed under section 256(2) of the Income Tax Act, 1961, the Tribunal has referred the following questions for our opinion :

'Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in confirming the order of the Commissioner (Appeals) by which he had restored the matter regarding levy of interest under section 216 to the Inspecting Assistant Commissioner for fresh consideration and rejecting the assessee's additional ground raised in this behalf '

'Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the expenditure of Rs. 2,500 incurred by the assessee in the preparation of the income-tax return was covered by section 80VV of the Income Tax Act and, therefore, not allowable under section 37 of the Income Tax Act, 1961

2.The assessee filed the return of income on 22-6-1982, declaring total income of Rs. 84,66,140. Relevant assessment year is 1982-83. While making the assessment, assessing Officer charged the interest under section 216 of the Income Tax Act, 1961.

In appeal before the Commissioner (Appeals), Commissioner (Appeals) took the view that as there was no speaking order, therefore, he restored the file to the Inspecting Assistant Commissioner (Asst), i.e., assessing officer. The assessee has not challenged this order of the Commissioner (Appeals), but raised this ground before the Tribunal. Tribunal rejected this ground of the assessee and observed as under :

'An additional ground was taken up before this Tribunal on 17-11-1984, praying that the Commissioner (Appeals) had instead of accepting the assessee's submission that the levy of interest of Rs. 31,347 under section 216 without passing a speaking order, had directed the Inspecting Assistant Commissioner (Asst.) to pass a speaking order. In fact the order for levy of interest should have been cancelled together. This ground was never formally admitted by the Bench but at the time of hearing of this appeal, it was argued that the Commissioner (Appeals)'s order in this behalf should be set aside. In the assessment order, a copy of which has been filed before us, there is a reference to the charging of interest though the reasons for that direction are not given. The Commissioner (Appeals) has directed the assessing authorities to give reasons. No objection was raised to the order of the Commissioner (Appeals) before us in the first instance. The objection even before the Commissioner (Appeals) was that the Inspecting Assistant Commissioner had erred in not giving any reason for charging of this interest. We, therefore, find no reason for allowing the assessee to take up this ground at this stage or any substance in this ground on merits which is hereby rejected.'

Thereafter a miscellaneous application was filed and that was also rejected by the Tribunal on 20-5-1986. In the second question, there is a dispute regarding claim of Rs. 16,102 spent by the assessee an legal charges paid to advocates and chartered accountants. Out of that amount assessing officer allowed only Rs. 5, 000 under section 80VV and the balance amount has been disallowed. The assessee further challenged the balance amount disallowed by the assessing officer.

In appeal before the Tribunal, the Tribunal relying on its earlier decision for assessment year 1978-79 similarly disallowed a sum of Rs. 2,090 over and above the amount estimated under section 80VV.

3. Heard learned counsel for the parties. The admitted facts are that Income Tax Officer charged interest under section 216 of the Income Tax Act. The matter was restored back to the Inspecting Assistant Commissioner (Asst) by Commissioner (Appeals) to decide the issue afresh and pass speaking order.

4. Mr. Mehta, learned A.G. submits that when order was not speaking and there was no application of mind, while charging interest under section 216, therefore, that order should liable to be set aside.

5. Mr. Singhi, learned counsel for the department, submits that if the order is not speaking and no reasons are given, the Commissioner (Appeals) has rightly restored the matter back to the assessing officer to pass a fresh order and give reasons for charging interest under section 216 of the Act.

6. Considering the submissions and in practice for charging the interest under section 216, no detailed reasons need to be given by the assessing officer, when the Commissioner (Appeals) has restored the matter back to the assessing officer to pass a fresh order and give reasons for charging the interest, we do not find any infirmity in such direction.

7. The amount, which has been claimed for deduction under section 80VV only part thereof has been disallowed. The Tribunal was right in its approach in

disallowing the payment of fees to chartered accountants for filing the returns and preparing the accounts after close of the year and for litigation to contest the tax imposed. We do not find that the payment of fees incurred for such type of jobs was for the business of the assessee. It relates to the income and that income has already been earned in the previous year. To contest for the tax imposed cannot be said to be for the purpose of business, particularly when negligible part of the amount of fees has been disallowed.

We find no justification to interfere in such disallowance, i.e., only Rs. 2,090. Therefore, no interference is called for in both the issues raised in the question referred.

In the result, we answer the questions in affirmative, i.e., in favour of the revenue and against assessee.

Reference so made stands disposed of accordingly.

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