Cit Vs. Hemraj Udyog

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Court : Rajasthan

Decided On : Aug-20-2002

Reported in : (2002)177CTR(Raj)544

Appeal No. : IT Ref. No. 15 of 1998 20 August 2002

Appellant : Cit

Respondent : Hemraj Udyog

Advocate for Pet/Ap. : Anuroop Singh for J.K. Singhi, For The Revenue Vivek Singhal, *for the Assessee*

Judgement :

By the Court

On an application filed under section 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question for the opinion of this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the order under section 263, dated 19-3-1991, was barred by limitation and consequently cancelling the order under section 263 ?'

2. In the case in hand, original assessment was completed on 16-12-1988. While framing the assessment, the assessee was granted deduction under section 32AB at the rate of 20 per cent of the book profits. As assessee was aggrieved on

certain additions/disallowances made in the original order, he preferred an appeal before the Commissioner (Appeals). Out of these grounds taken before the Commissioner (Appeals), two grounds were rejected and on the third ground regarding depreciation, the Commissioner (Appeals) remanded the matter back to the assessing officer for fresh consideration. Following the directions of the Commissioner (Appeals) and after examining the issue relating to depreciation, the assessing officer made a fresh assessment order on 27-12-1989. Subsequently, the Commissioner assuming the jurisdiction under section 263 of the Act, issued a show-cause notice to the assessee dated 31-12-1991. After hearing the assessee, the Commissioner (Appeals) was of the view that the deduction of Rs. 2,66,255 granted to the assessee under section 32AB was not proper and hence, it rendered the assessment to be erroneous and prejudicial to the interests of revenue. After giving due opportunity of hearing to the assessee, the Commissioner made an order under section 263 of the Act directing the assessing officer to reframe the assessment after re-examining the claim of the assessee for deduction under section 32AB of the Act.

3. In appeal before the Tribunal, the Tribunal held that period of limitation starts with effect from the date of original assessment order dated 16-12-1988, since the issue related to deduction under section 32AB stood settled in the earlier order itself. The subsequent assessment order was for a limited issue of depreciation only. The Tribunal also observed that if the contention of the revenue is accepted, then every error in the original assessment discovered after the fresh assessments are made, would go on enlarging the limitation period. Thus, the Tribunal has quashed the order of Commissioner under section 263 on the ground of limitation.

4. Heard learned counsel for the parties.

5. Mr. Singhal, learned counsel for the assessee, has supported the view taken by Tribunal. Mr. Singhi, learned counsel for the revenue, has supported the order of Commissioner under section 263 of the Act.

6. The admitted facts are that original assessment order has been made on 16-12-1988. Assessee thereafter filed the appeal before the Commissioner (Appeals) but no ground was taken regarding deduction under section 32AB of the Act.

Thereafter, Commissioner (Appeals) has issued notice and passed order under section 263 on 26-2-1992, directing the assessing officer to withdraw the deduction allowed under section 32AB of the Act.

7. Mr. Singhal, learned counsel for the assessee, has brought to our notice the decision of Apex Court in the case of CIT v. Shri Arbuda Mills Ltd. (1998) 147 CTR (SC) 474, wherein their Lordships held 'items, which are not subject-matter of the appeal in view of retrospective insertion of Explanation (c) to sub-section (1) of section 263, the powers of Commissioner shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in appeal filed by the assessee.

8. It is true that Commissioner has the power to revise the order of the assessing officer on the issues which are not taken in appeal before the Commissioner (Appeals), but if the limitation has expired, Commissioner cannot revise the original order of Income Tax Officer beyond the period of limitation. Period of limitation in this case is two years from the date of order sought to be revised i.e., 16-12-1988, but the order of Commissioner under section 263 is dated 26-2-1992, i.e., beyond two years.

Considering these facts, no interference is called for in the order of the Tribunal.

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

The reference so made stands disposed of.

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