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Cit Vs. Suresh Nanda

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Court : Delhi

Decided On : Feb-25-2013

Judge : Badar Durrez Ahmed

Appellant : Cit

Respondent : Suresh Nanda

Judgement :
THE HIGH COURT OF DELHI AT NEW DELHI % + + + Judgment delivered on:

25. 02.2013 ITA 85/2013 ITA 100/2013 ITA 87/2013 CIT ... Appellant versus SURESH NANDA ... Respondent Advocates who appeared in this case: For the Appellant For the Respondent : Mr Sanjeev Rajpal : Mr C.A. Sundaram, Sr. Adv. with Mr Ajay Wadhwa, Mr Sandeep Kapur, Mr Laksh Khanna, Ms Rohini Musa, Mr Govind Singh Grewal, Advs. CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE R.V.EASWAR JUDGMENT BADAR DURREZ AHMED, J (ORAL) 1. These appeals have been filed by the revenue under section 260A of the Income-tax Act, 1961 (hereinafter referred to as the said Act) and they pertain to the assessment years 2001-02, 2002-03 and 2003-04. All these appeals arise out of the common order passed by the Tribunal on 24.07.2012 in ITA Nos. 1428, 1429 and 1430/Del/2012.

2. The main issue that is sought to be raised in these appeals is with regard to the residential status of the respondent/assessee. According to the learned counsel for the revenue/appellant, the respondent was a resident of India whereas the

Tribunal has erred in holding that the respondent/assessee was not residing in India. Apart from the question of residence, certain other issues were examined by the Tribunal. They were as under:(i) The addition of Rs. 65,85,000/- under section 69 of the Income-tax Act, 1961 in respect of the assessment year 2002-03; (ii) The addition based on the documents which were allegedly found in the possession of 3rd parties. This was in respect of the assessment years 200203 and 2003-04; (iii) The addition with regard to the marriage expenses of the respondent/assessees daughter pertaining to the assessment year 2002-03; (iv) The addition with regard to the payment made to the respondent/assessees estranged wife Smt Renu Nanda in respect of the assessment year 2003-04; (v) The addition of Rs.10,51,20,000/- under section 68 of the said Act in respect of the assessment year 2001-02.

3. Insofar as the first addition of Rs. 65,85,000/- is concerned, that matter has been remanded by the Tribunal to the assessing officer for a consideration afresh. Insofar as the addition based on the documents found from the third parties are concerned, the Tribunal has also remanded this aspect of the matter in view of the fact that the respondent/assessee had not been granted an opportunity of crossexamining the persons from whom the said documents had been allegedly recovered. The matter has been remanded to the assessing officer to examine this issue after giving an opportunity of cross-examination to the respondent/assessee.

4. Insofar as the question of marriage expenses of the respondent/assessees daughter is concerned, that issue has also been remanded by the Tribunal to the assessing officer for considering the same afresh. In fact, the revenue has not even proposed any question in respect of this issue and is not challenging the Tribunals order insofar as this remand is concerned.

5. The addition with regard to the payment made to estranged wife Smt Renu Nanda, for the assessment year 2003-04, has been deleted by the Tribunal. This is challenged by the revenue in the appeal pertaining to the assessment year 2003-04. However, we find that the same has been concluded by the Tribunal purely on an appreciation of facts. The Tribunal has noted that the respondent/assessee and his wife Smt Renu Nanda had separated by way of a

deed of settlement dated 04.04.1998 and the payments were based thereon. The Tribunal also noted that the addition has not been based on any evidence or incriminating material indicating that any payment had been made outside the books. The Tribunal observed that the sole basis for the assumption on the part of the assessing officer was that there was some unwritten understanding between the respondent/assessee and his estranged wife Smt Renu Nanda. Therefore, the Tribunal was of the view that the purported basis of the addition was only a presumption raised by the assessing officer. There being no other material whatsoever, the Tribunal held that the addition was liable to be deleted and it ordered accordingly. The Tribunal made it clear that this ground was raised only in the assessment year 2003-04. We are of the view that this is a pure finding of fact and no substantial question of law arises insofar as this issue is concerned.

6. We are left to consider the addition of Rs. 10,51,20,000/- made under section 68 of the said Act. Insofar as this addition is concerned, the decision with regard to it would depend on whether the respondent/assessee is regarded as a resident or a non-resident. In case he is regarded as a resident then, obviously, this addition would have to be made. But, if he is regarded as a non-resident then this addition will have to be deleted. This is exactly what the Tribunal has done. The Tribunal considered the case of the revenue as well as that of the respondent/assessee and determined that the respondent/assessee was a non-resident and therefore the said addition has been deleted.

7. That leaves us with the issue with regard to the residential status of the respondent/assessee. Section 6 of the said Act, so far as it is relevant, reads as under:6. For the purposes of this Act,(1) An individual is said to be resident in India in any previous year, if he(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or (b) xxx xxx xxx xxx (c) Having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty five days or more, is in India for a period or periods amounting in all to sixty days or more in that year. Explanation- In the case of an individual,(a) Being a citizen of India, who leaves India in any previous year (as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or) for

the purposes of employment outside India, the provisions of sub-cluase (c) shall apply in relation to that year as if for the words sixty days, occurring therein, the words one hundred and eighty-two days had been substituted; (b) Being a citizen of India, or a person of Indian origin within the meaning of Explanation of clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words sixty days, occurring therein, the words one hundred and (eighty-two) days had been substituted. (2) 8. xxx xxx xxx Before we examine the provisions of section 6 it would be appropriate to set out the number of days of stay of the respondent/assessee in India. This has been tabulated in the assessment order. There is a discrepancy between the number of days as computed by the assessee and the so-called actual number of days as computed by the assessing officer. The same is given in the chart below:- A.Y 2001-02 2002-03 2003-04 2004-05 2005-06 2006-07 9. No. of days in India as computed by the assesse

138. 15

155. 158 Actual days No. o

150. 17

171. 176 Whether we take the computation of the respondent/assessee or of the assessing officer, it is evident that the respondent/assessee has spent less than 182 days in each of the three years in question, that is, assessment years 2001-02, 2002-03 and 2003-04.

10. We shall now examine the provisions of section 6. It is apparent that section 6(1)(a) makes it clear that an individual would be a resident of India in any previous year if he was in India in that year for a period or periods amounting in all to 182 days or more. The respondent/assessee, clearly, is not such an individual because in none of the years in question did he stay in India for 182 days or more.

11. The learned counsel for the appellant sought to argue that the respondent/assessee would fall within section 6(1)(c) read with explanation (b).

However, we fail to see as to how that provision would come to aid of the appellant. Section 6(1)(c) applies to citizens of India as well as to persons of Indian origin. It also applies to foreigners. Insofar as foreigners are concerned section 6(1)(c) has the stipulation of stay in India for a period or periods amounting in all to 60 days or more in the year in question. However, this is in addition to the condition of total stay in the preceding four years amounting in all to 365 days or more. But, in the case of citizens of India, the length of stay in India in a particular year has been extended to 182 days as compared to 60 days for foreigners. This period of 182 days was earlier 150 days and by virtue of the Finance Act 1994, with effect from 01.04.1995 the word fifty has been substituted by eighty-two. In other words, instead of 150 days stay in India, the period of stay required is 182 days for an individual to be covered under section 6(1)(c) read with explanation (b), in case he is an Indian citizen or a person of Indian origin.

12. In the present case, although, the respondent/assessee has, in the preceding 4 years been in India for a period in excess of 365 days in India, in none of years has he been in India for a period in excess of 182 days. Therefore, the Tribunal is absolutely right in concluding that the respondent/assessee was not a resident of India. This is a pure question of fact based on a plain reading of the provisions of section 6. All that has to be seen is the number of days that the respondent/assessee has spent in India in the year in question as also in the preceding 4 years. No substantial question of law arises insofar as this aspect of the matter is concerned.

13. In view of the fact that the Tribunal has correctly decided that the respondent/assessee was not a resident in India in the years in question, it is axiomatic that the addition of Rs. 10,51,20,000/- under section 68 would have to be deleted because it was a transfer from the respondent/assessees foreign account to the domestic account.

14. In view of the foregoing we do not find any substantial question of law which arises for our consideration in these appeals. The appeals are dismissed. BADAR DURREZ AHMED, J R.V.EASWAR, J FEBRUARY 25 2013 kb

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