The Commissioner of Income Tax Vs K.S. Conduit

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 14, 2010

Acts Referred: Finance Act, 2002 â€" Section 158BB, 158BC, 158BH
Income Tax Act, 1961 â€" Section 139, 143(3), 145, 145(2), 260A

Hon'ble Judges: Ajay Kumar Mittal, J; A.K. Goel, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Adarsh Kumar Goel, J.
This order will dispose of I.T.A. Nos. 37 and 38 of 2002, as common questions have been raised in both the

appeals.

2. On 24.9.2010, following order was passed:

1. ITA No. 37 of 2002 has been preferred by the revenue u/s 260A of the Income Tax Act, 1961 (in short ""the Act"") against the order of the

Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as ""the Tribunal"") passed in I.T.A. No. 14/Chandi/96 on

25.7.2001 for the block assessment years 1986-87and 1996-97 proposing following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the ITAT was right in holding that provision of Section 145(2) are not applicable to block

assessments especially when Section 158BH specifically states that save as otherwise provided in this Chapter, all other provisions of the Act shall

apply to assessment made under this chapter?

(ii) Whether in the facts and circumstances of the case, the ITAT was right in deleting the addition, when the power of estimation is inherent in

Section 143(3) itself and the Assessing Officer was duty bound to estimate the income in the circumstances of the case?

(iii) Whether in the facts and circumstances of the case, the ITAT was right in allowing depreciation and excise duty for the assessment year 1994-

95 when no such deduction was admissible in view of the provisions of Section 158BB(i) as no such deduction was claimed in the original return of

income filed u/s 139?

2. Search was conducted on the premises of the assessee on 23.11.1995. On the basis of material so found, the Assessing Officer made block

assessment and in the course of assessment rejected the books of account but on appeal the same was set aside by the Tribunal on the ground that

block assessment under Chapter XIVB of the Act could not travel beyond the searched material by invoking Section 145 of the Act.

3. During the course of arguments, learned Counsel for the revenue states that the block assessment order was based on material found during

search and inference is drawn therefrom and, thus, the substantial question of law which arises for consideration is:

Whether in the facts and circumstances of the case, the assessment based on material found during search could be set aside on the ground that

Section 145(2) was not applicable?

4. We allow question (i) to be modified accordingly.

5. Learned Counsel for the assessee states that he is not ready to proceed further on the amended question.

6. List again on 14.10.2010.

3. Learned Counsel for the assessee submits that whatever be the earlier interpretation, there is an express amendment to Section 158BC(b) by

Finance Act, 2002, applicable w.e.f. 1.7.1995 making Section 145(2) of the Act applicable to block assessment. He submits that the matter will

have to be reconsidered by the Tribunal in the light of applicability of Section 145 of the Act.

4. Accordingly, we answer the question in favour of revenue and hold that the assessment based on material found during search could not be set

aside only on the ground that Section 145(2) of the Act was not applicable. The appeal is allowed, order of the Tribunal is set aside and the matter

is remanded to the Tribunal for fresh decision on merits in accordance with law.

5. Parties may appear before the Tribunal for further proceedings on 20.12.2010.