(2009) 12 P&H CK 0134

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax A. No. 217 of 2008

Commissioner of Income Tax		APPELLANT
	Vs	
Abhinash Gupta		RESPONDENT

Date of Decision: Dec. 11, 2009

Acts Referred:

- Finance Act, 2008 - Section 268A
- Income Tax Act, 1961 - Section 143(3), 260A, 54F

Citation: (2010) 327 ITR 619

Hon'ble Judges: Satish Kumar Mittal, J; Mehinder Singh Sullar, J

Bench: Division Bench

Advocate: Rajesh Sethi, for the Appellant; Ravish Sood, for the Respondent

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

This appeal has been filed by the Revenue u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") against the order dated September 7, 2007 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in I. T. A. No. 12(ASR)2005, for the assessment year 2000-01 raising the following substantial question of law:

(i) Whether on the facts and circumstances of the case, the hon''ble Income Tax Appellate Tribunal is correct in law in holding that repayment of loan against residential house more than one year or within one year of transfer of long-term capital asset qualifies for exemption u/s 54F of Income Tax Act, 1961 ?

2. In the present appeal, the assessee is an individual and deriving income from LPG distributorship. For the assessment year 2000-01, the assessee filed his return declaring his income of Rs. 2,25,710. The Assessing Officer, vide its order dated March 25, 2003, framed the assessment u/s 143(3) of the Act at an income of Rs.

7,60,580 while disallowing the claim of exemption of Rs. 4,04,664 u/s 54F of the Act. It was held by the Assessing Officer that the assessee was not eligible for the benefit of Section 54F of the Act on the amount of repayment of housing loan taken for construction of residential house as the investment on the purchase of new residential house had not been made within the specified time of one year before the date when the long-term capital gains arose. The order of the Assessing Officer was upheld by the Commissioner of Income Tax (Appeals). However, the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT"), vide its order dated September 7, 2007, has set aside the aforesaid addition while coming to the conclusion that the investment was made by the assessee in the residential house during the period March 1, 1999, to March 26, 1999, i.e., within the period of one year prior to the date of the transfer of long-term capital assets, therefore, he was eligible for the benefit of Section 54F of the Act. Against the said order, the instant appeal has been filed by the Revenue.

3. We have heard the learned Counsel for the parties.

4. Learned Counsel for the assessee took a preliminary objection that in view of Circular No. 5, dated May 15, 2008 issued by the Department of Revenue, Central Board of Direct Taxes and a Division Bench decision of this Court in Commissioner of Income Tax Vs. Oscar Laboratories (P) Ltd., , the instant appeal filed by the Revenue is not maintainable because the tax effect in this appeal is less than Rs. 4 lakhs.

5. In response to the preliminary objection, learned Counsel for the Revenue argued that the restriction of monetary limits for filing an appeal by the Department, as imposed by Circular No. 5 dated May 15, 2008, is not applicable in the instant case because clause 10 of Circular No 5 of 2008 provides that the said circular will be applicable only to those appeals filed on or after May 15, 2008, and as per clause 3 of Circular No. 5 of 2008 provides that in cases where the question of law involved or raised in appeal is of recurring nature to be decided by the court, then those cases should be separately considered on the merits without being hindered by the monetary limits. The cases, where the appeals have been filed before May 15, 2008, will be governed by the circular issued on this subject, operative at the time when such appeal was filed, i.e., Circular No. 5 of 2008. While referring to these provisions, learned Counsel argued that since in the instant case the appeal was filed prior to May 15, 2008, therefore, the same is to be governed by clause 3 of Circular No. 5 of 2008 and since in the instant appeal the question of law is of recurring nature, therefore, the same should be decided on the merits. Learned Counsel further argued that the impact of clause 10 of Circular No. 5 of 2008 was not considered by this Court in Commissioner of Income Tax Vs. Oscar Laboratories (P) Ltd., , therefore, the ratio of that judgment is not applicable in the instant appeal.

6. While controverting the aforesaid contention of the learned Counsel for the Revenue, learned Counsel for the assessee argued that in the instant case the disputed issue is not of recurring nature and the same is not arising in more than

one assessment year, therefore, the contention of the learned Counsel for the Revenue that since in the case of the assessee the issue is of recurring nature, therefore, it should be separately dealt with on the merits, cannot be accepted. Learned Counsel further argued that even if the appeal is filed prior to May 15, 2008, Circular No. 5 of 2008 would be applicable to cases pending before the court either for admission or for final disposal. In support of his contention, learned Counsel placed reliance upon the decision of the Bombay High Court in CIT v. Madhukar K. Inamdar (HUF) [2009] 318 ITR 149.

7. After hearing the arguments of the learned Counsel for the parties, we find force in the preliminary objection raised by the learned Counsel for the assessee with regard to maintainability of the appeal filed by the Department. During the course of arguments, it is not disputed before us that the tax effect in the instant case is less than Rs. 4 lakhs. In the present case, the Assessing Officer disallowed the claim of the assessee of exemption of Rs. 4,04,664 u/s 54F of the Act on the ground that the investment made by the assessee on construction in a residential house was not made within the specified time of one year before the date when the long-term capital gains arose. However, the said addition was deleted by the Income Tax Appellate Tribunal while recording a finding of fact that the investment by the assessee on construction in a residential house was made during the period March 1, 1999 to March 26,1999. The said finding was recorded on the basis of the housing loan account. It has also been held that the transfer of the long-term capital asset, i.e., shares and securities took place on February 1, 2000, therefore, the said investment was within one year prior to the date of transfer of the long-term capital asset. In view of the said fact, it was held that the assessee was fully eligible for the benefit of Section 54F of the Act. Though the Income Tax Appellate Tribunal has deleted the addition on the basis of the above-said finding of fact, yet, in our opinion, the dispute arises in this appeal is not of recurring nature. Even if it is taken that the alleged substantial question of law raised in this appeal is of recurring nature, in our opinion, the Revenue cannot maintain the instant appeal in view of Circular No. 5 of 2008 issued by the Central Board of Direct Taxes, as the cumulative tax effect involved, in this appeal is less than Rs. 4 lakhs. In Commissioner of Income Tax Vs. Oscar Laboratories (P) Ltd., , it was held that the Instructions/Circulars issued by the Central Board of Direct Taxes laying down monetary limits for filing of appeals are mandatory and binding on the Revenue. The contention of the learned Counsel for the Revenue that Circular No. 5 of 2008 is not applicable on the appeals filed prior to May 15, 2008, cannot be accepted. The similar issue has been considered by the Bombay High Court in CIT v. Madhukar K. Inamdar (HUF) [2009] 318 ITR 149 wherein it was held that Circular No. 5 of 2008 is also applicable on the pending appeals, irrespective of the fact whether the same were filed before or after May 15, 2008. In this regard the Bombay High Court made the following observations (page 150):

It cannot be disputed that the Central Board of Direct Taxes Circular dated May 15, 2008, has no retrospective effect. It operates from the date of its issuance. As a corollary thereof, the appeals which come on board for consideration after the issuance of the Central Board of Direct Taxes Circular dated May 15, 2008, needs to be considered in the light of the said Circular. Application of the said Circular to the cases coming on board after May 15, 2008, by no stretch of imagination can be said to be an application of Circular with retrospective effect.

In order to consider the issue in its right perspective, it is necessary to refer to the Circular of the Central Board of Direct Taxes dated May 15, 2008, paragraph 5 of which reads as under:

5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issue in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal shall be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issue exceeds the monetary limit specified in paragraph 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in paragraph 3. In other words, henceforth, appeals will be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one year, appeal shall be filed in respect of all assessment years even if the ''tax effect'' is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which ''tax effect'' exceeds the monetary limit prescribed.

(emphasis supplied)

The aforesaid paragraph (5) makes it clear that no appeals should be filed in the cases involving tax effect less than Rs. 4 lakhs notwithstanding the issue being of recurring nature.

The aforesaid paragraph (5) was a subject-matter of the judicial interpretation in the case of CIT v. Polycott Corporation in Income Tax Appeal No. 1241 of 2008 decided on January 23, 2009, (since reported in [2009] 318 ITR 144 (Bom) wherein this Court ruled as under (page 146):

It would be clear from the above that if in the case of an assessee if the disputed issues arise in more than one assessment year, appeals are to be filed only in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in paragraph 3. In other words, even if in respect of the same issue in respect of the same assessee for other assessment years the monetary limit is not more than Rs. 4 lakhs, appeals need not be filed. Paragraph 6 makes it clear that in such a case if an appeal is not filed, there will be no presumption that the Income Tax Department has acquiesced in the decision on the disputed issues.

The aforesaid judicial verdict makes it clear that the Circular dated May 15, 2008, in general and paragraph (5) thereof in particular lay down that even if the same issue, in respect of the same assessee, for other assessment years is involved, even then the Department should not file appeal, if the tax effect is less than Rs. 4 lakhs. In other words, even if the question of law is of recurring nature even then, the Revenue is not expected to file appeals in such cases, if the tax impact is less than the monetary limit fixed by the Central Board of Direct Taxes.

One fails to understand how the Revenue, on the face of the above clear instructions of the Central Board of Direct Taxes, can contend that the Circular dated May 15, 2008, issued by the Central Board of Direct Taxes is applicable to the cases filed after May 15, 2008, and in compliance thereof, they do not file appeals, if the tax effect is less than Rs. 4 lakhs; but the said circular is not applicable to the cases filed prior to May 15, 2008, i.e., to the old pending appeals; even if the tax effect is less than Rs. 4 lakhs. In our view, there is no logic behind this belief entertained by the Revenue.

This court can very well take judicial notice of the fact that by passage of time money value has gone down, the cost of litigation expenses has gone up, filing of cases at the instance of the Revenue has increased; consequently, the burden on the Department has also increased to a tremendous extent. The corridors of the superior courts are choked with huge pendency of cases. The litigation expenses have also increased manifold. In this view of the matter, the Board has rightly taken decision not to file appeals if the tax effect is less than Rs. 4 lakhs so as to reduce burden of the Department as well as that of the tribunals and courts. The same policy for old matters needs to be adopted by the Department so as to achieve the object of the policy laid down by the Central Board of Direct Taxes.

It would be in the public interest if the Revenue concentrates on the cases wherein tax effect is substantially high rather than running after the assessees wherein the tax impact is less than Rs. 4 lakhs considering the cost of litigation and other administrative cost which may be much more than the tax recovery.

At this juncture, it will be relevant to note that the Central Board of Direct Taxes has also issued a Circular on June 5, 2007, directing the Department to examine all appeals pending before this Court on case to case basis with further direction to withdraw cases wherein the criteria of monetary limits as per the prevailing instruction is not satisfied, unless the question of law involved or raised in appeal or referred to the High Court for opinion is of a recurring nature required to be settled by the higher court.

The aforesaid Circular makes it clear that on the date of issuance of Circular, prevailing instructions fixing monetary limit will hold good even for pending cases. Adopting the same approach, we are of the considered view that the Central Board of Direct Taxes Circular dated May 15, 2008, would be very much applicable to the pending cases requiring the Department to withdraw cases wherein the tax effect is

less than the prescribed monetary limits.

At this juncture, it will also be relevant to mention that it was necessary for the Central Board of Direct Taxes to put a caveat, while issuing instructions, vide its Circular dated June 5, 2007, that the appeals involving substantial question of law of recurring nature should not be withdrawn since provision like Section 268A of the Income Tax Act was absent. Now, in view of the insertion of the provision of Section 268A by the Finance Act, 2008, with effect from April 1, 1999, in the Income Tax Act, 1961, no prejudice could be caused to the Revenue even if the cases involving legal issues of recurring nature are withdrawn, since the newly inserted provision takes care of the adverse eventuality which could have been put against the Revenue.

8. While agreeing with the view taken by the Bombay High Court, we are of the view that Circular No. 5 of 2008 would be applicable to the cases pending before this Court either for admission or for final disposal and that the said Circular is binding on the Revenue. Since admittedly the tax effect in this appeal is less than Rs. 4 lakhs, therefore, in our opinion, the appeal filed by the Revenue is not maintainable and the same is hereby dismissed with no order as to costs.