CIT Vs Expeditors International India Pvt Ltd.

Court: Delhi High Court

Date of Decision: Dec. 8, 2011

Acts Referred: Income Tax Act, 1961 â€" Section 147, 148, 254, 260A

Citation: (2011) 2 AD 94 : (2012) 186 DLT 240 : (2012) 205 TAXMAN 107

Hon'ble Judges: Sanjiv Khanna, J; R.V. Easwar, J

Bench: Division Bench

Advocate: Kamal Sawhney, for the Appellant; Shashi M. Kapila, R.R. Maurya and Mr. Sushil Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The Revenue, in this appeal u/s 260A of the Income Tax Act, 1961 (Act, for short) impugns order dated 31.8.2010 passed by the Income Tax

Appellate Tribunal (tribunal, for short) in the case of Expeditors International Pvt. Ltd, the respondent-assessee. The assessment year in question is

2002-03.

2. Learned Counsel for the revenue has submitted that the tribunal has erred in entertaining and deciding the additional ground, questioning the

validity of re-opening u/s 147/148 of the Act. It is submitted that the respondent had not raised and questioned the re-opening before the

Assessing Officer and the Commissioner of Income Tax (Appeals) (CIT (A), for short). It is urged that the procedure prescribed in GKN

Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, was not followed by the respondent-assessee and, therefore, the respondent is

precluded and should not have been permitted to raise the additional ground.

3. It is not possible to accept the last contention of the Revenue. GKN Driveshafts (supra) prescribes one of the methods or modes by which an

assessee can object to re-opening of assessment. It is not necessary or mandatory that an assessee should file a writ petition. The assessee can

also object to re-opening in the appellate proceedings. Whether or not the pre-conditions for re-opening are satisfied is a matter of jurisdiction or

lack of jurisdiction. It goes to the root of the matter. If the jurisdictional pre-conditions are missing and are absent, the assessee can object and

question the reopening in the appellate proceedings. It is not necessary that the assessee must file a writ petition and question the reassessment

proceedings.

4. Whether and when an additional ground can be raised and entertained by the tribunal is not res integra. The Supreme Court in Jute of

Corporation of India Ltd. Vs. Commissioner of Income Tax and another, had observed:-

...The declaration of law is clear that the power of the Appellate Assistant Commissioner is conterminous with that of the income tax Officer, and if

that is so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not

raised before the income tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the

exercise of appellate power. Even otherwise, an appellate authority while hearing the appeal against the order of a subordinate authority, has all the

powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the

statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate

authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the

Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment

passed by the income tax Officer.

5. Similarly, in the case of National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax, , it was held:

Under section 254 of the income tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard,

pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The

purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If,

for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a

permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for

the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal u/s

254 only to decide the grounds which arise from the order of the Commissioner of income tax (Appeals). Both the assessee as well as the

Department have a right to file an appeal/crossobjections before the Tribunal. We fail to see why the Tribunal should be prevented from

considering questions of law arising in assessment proceedings although not raised earlier.

6. Referring to these two judgments and earlier judgment of the Supreme Court in Commissioner of Income Tax, U.P.,Lucknow Vs. Kanpur Coal

Syndicate, , a Division Bench of this Court in CIT vs. Hydrocarbons India Ltd. (2011) 63 DTR (Del.) 15, has held as under:

7. Therefore, according to us, if the facts and material available with the Tribunal give rise to a pure question of law, then the Tribunal ought not

have any difficulty in entertaining the additional ground. We are, at this stage, not expressing a view either way as to whether the ground is

sustainable or not. We propose to remand the matter to the Tribunal to consider the additional ground that ought to have been considered by it, in

the first instance. The only caveat being, that the assessee shall not be allowed to move any application to rely upon material other than that which

is already on record before the Tribunal.

7. In the present case the relevant facts/materials were available before the tribunal, when the assessee raised the additional plea challenging the

very initiation of re-assessment proceedings on the ground that the jurisdictional pre-conditions were not satisfied. The tribunal did not feel any

difficulty in considering or deciding the additional ground as the facts and other details were already on record. In fact, the material relied upon by

the tribunal is the material available in the records of the Assessing Officer. No new or fresh evidence was adduced before the tribunal.

Accordingly, we do not find any merit in the first contention raised by the Learned Counsel for the Revenue.

8. On merit, the tribunal has recorded that in the original assessment proceedings, the Assessing Officer had examined whether the communication

expenses of Rs.43,48,151/- were based upon mere estimate of the management pending finalization of the agreement or an ascertained liability. It

has been held by the tribunal that this aspect was duly deliberated upon during the course of the original assessment proceedings. The tribunal has

referred to the questionnaire issued by the Assessing Officer and the reply of the assessee vide letter dated 28.02.2005. In the said letter, the

respondent-assessee had enclosed details of communication expenses. The respondent-assessee had also filed copy of the some of the invoices to

demonstrate and establish validity and justify the claim. In the return of income, the assessee had disclosed the nature of communication

expenditure in schedule No.14 to the audited accounts. In addition, at serial No.8 of the Notes, the assessee has specifically stated that

communication expenses of Rs.43,48,141/- were computed and treated as expenditure on the basis of management''s estimate pending finalization

of agreement with the service provider. The tribunal has observed that no fresh material had come to the knowledge or information of the

Assessing Officer after passing of the first assessment order. The tribunal has, therefore, rightly come to the conclusion that this is a case of change

of opinion as this issue in question was examined in the original assessment proceedings. It is not alleged that the said finding are wrong. In the

grounds of appeal/during the course of hearing, Learned Counsel for the appellant could not controvert and demonstrate that said findings are

erroneous and contrary to record.

9. Accordingly, we do not find any merit in the second contention.

The appeal is dismissed with no order as to costs.