Commissioner of Income Tax Vs Preeti N. Aggarawala

Court: Delhi High Court

Date of Decision: Jan. 6, 2011

Citation: (2011) 1 AD 769

Hon'ble Judges: M.L. Mehta, J; A.K. Sikri, J

Bench: Division Bench

Advocate: N.P. Sahni, for the Appellant; O.P. Sapra and Sandeep Sapra, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, J.
This appeal is preferred against the order of the Income Tax Appellate Tribunal (hereinafter, in short ITAT) which was

passed on 5th December, 2001. The appeal was filed only on 23rd January, 2007. According to the Department, this appeal is within time,

inasmuch as, copy of the order passed by the Tribunal was not received in the concerned office of the Appellant and under these circumstances,

the Appellant applied for the certified copy of the impugned order which was made available only on 29th September, 2006. On notice, issued in

the appeal, the Respondent entered appearance through her counsel. The counsel for the Respondent submitted that the copy of the impugned

order was received by the Department much earlier since the Registry of the Tribunal had sent the same to the Department and therefore, the plea

that no copy of the order was received in the office of the Department, was erroneous. On this plea of the Respondent, notice was issued to the

ITAT to give its report on the aforesaid aspect We may also point out that the statement of learned Counsel for the Respondent was based on the

information received from the office of ITAT under the Right to Information Act On this basis, original records containing the application of the

Respondent under RTI and the fie of the Tribunal was called for. The Tribunal sent the file in original. A perusal of this file showed that the copies

of the order were first sent to the Income Tax Department on 31st January, 2002 which was not received by the Department It was again sent on

1st January, 2003 to the Central Service Office and this time also the same was not accepted. It is thereafter only that the Income Tax Department

obtained the certified copy of the order on 29th September, 2006.

2. There is no doubt that on the first two occasions the copies of the orders were sent by the Tribunal to the offices of the Department which were

not concerned with this case. For these reasons, the said offices did not accept the copy of the order. It may not be possible for the ITAT to find

out as to which shall be the concerned section or office of the Department where copy in a particular case is to be delivered. Be as it may, we are

of the opinion that the delay occurred because of the aforesaid circumstances. We also find that it is not a case where the Appellant did not act

with due diligence. We may place on record that the case of the husband of the Respondent was also before the Tribunal, which was deckled in

favor of the husband. On receipt of the copy of that order, the Department had preferred appeal within time. The said appeal is admitted as well

and this dearly gives an impression that had the copy been received by the Department, it would have acted in this matter as well by filing appeal

within the period of limitation. The aforesaid event occurred because of lack of coordination between ITAT and the Income Tax Department, so

far as the supply of certified copies is concerned.

3. Having taken note of this fact and some other shortcomings and lapses which were brought to our notice regularly, vide order dated 11th

November, 2010 we had summoned the Secretary (Revenue), Government of India as well as the Chairman, CBDT. These two officers appeared

on 1st December, 2010 after receiving the order dated 11th November, 2010. Before appearing in the Court on 1st December, 2010, the

Department had taken certain steps to address the difficulties which were arising in prosecuting the appeal properly. Action Taken Report was

filed on 1st December, 2010 along with the copies of Minutes of Meetings held from time to time in this behalf, which was taken on record. A

hope was expressed that if effective steps in this direction would be taken there would be significant improvements in the functioning of the Judicial

Cell as well as of the Income Tax Department. Though, this is not the stage to comment upon aforesaid, Mr. Sahni, learned Counsel appearing for

the Appellant affirms that some effective steps have already been taken and efforts are still on in this direction.

4. For all these reasons, on oral prayer made by the learned Counsel for the Appellant, we condone the delay in filing the said appeal.

5. Though, two issues are raised in this appeal, the notice was issued on issue No. 1 only. In the orders dated 29th September, 2008, this Court

categorically recorded that second question does not arise for consideration at all. Because of this reason, we have heard learned Counsel for both

the parties on the first issue raised on which following question of law is proposed:

Whether the ITAT was correct in law in deleting addition of Rs. 18,63,625/- made by the Assessing Officer on account of differences in the two

sets of accounts maintained by the Assessee, which was confirmed by CTT(A) also?

6. It should be pointed out that a search and seizure operation was conducted on the premises of the Assessee and her husband, Mr. N.K.

Aggarawala on 16/17th October, 1992 and their residential premises were also searched on 23rd October, 1992. Some books of accounts in the

form of floppies, registers and some other papers were found and seized. Notice pursuant thereto was issued and in response thereto, the

Assessee had filed Income Tax Return of Rs. 30,00,000/-The Assessing Officer, however, computed the assessment of income of Rs.

2,83,97,830/ -. This return was not accepted and many additions were made. As we are concerned only with one addition, it is not necessary to

say about other additions. In so far as the addition of Rs. 18,63,625/- is concerned, Assessing Officer after noticing that the Assessee has

maintained accounts on two different systems - STRAC (Share Transaction Accounting System) and FINAC (Financial Accounting System),

under which brokerage income was shown at Rs. 62,56,038/- and Rs. 44,05,6055/- respectively. This showed the difference of Rs. 18,50,685/-.

The Assessee was required to file reconciliation statement with regard to the difference, which was filed by the Assessee. The Assessing Officer

observed that the Assessee had debited a sum of Rs. 18,33,625/- on account of debit note raised by M/s N.K. Aggarawala and Co. because of

rate difference vide challan No. 824. According to the Assessing Officer the transactions were of Reliance shares of different dates and the debit

note was earlier raised on 31st March, 1992. On these basis, the Assessing Officer, drew adverse inference as he was of the view that the

Assessee has with malafide intentions got debit note from her husband, Mr. N.K. Aggarawala, who was the proprietor of M/s N.K. Aggarawala

and Co. to reduce the tax burden and addition was made on this basis. The Tribunal, while dealing with addition, has inter alia observed that the

inference drawn by the Assessing Officer that the debit note was issued for the purpose of tax reduction is factually incorrect because the husband

of the Assessee had already declared an income of more than Rs. one crore, and therefore, this cannot be a case of reducing the tax liability of the

Assessee and further for the same amount tax cannot be charged twice - once at the hand of husband and again at the hand of the Assessee. We

find this to be a justified reason for deleting the aforesaid addition. No question of law arises.

7. The present appeal is, accordingly, dismissed.