courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 09/11/2025

(1998) 02 DEL CK 0060

Delhi High Court

Case No: CWP No. 1756 of 1997

Smt. Krishna Gupta	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision: Feb. 18, 1998

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1998) 150 CTR 341 : (1998) 231 ITR 628 : (1999) 102 TAXMAN 105

Hon'ble Judges: R.C. Lahoti, J; Dalveer Bhandari, J

Bench: Division Bench

Advocate: Wazir Singh and Mukul Gupta, for the Appellant; R.D. Jolly and Ajay Jha, for the Respondent

Judgement

R.C. Lahoti, J.
The petitioner seeks to lay challenge to an order of assessment dated March 29, 1995, passed by the Income Tax Officer, and the order dated February 21, 1997, passed by the Commissioner of Income Tax (Appeals) whereby he has set aside the assessment order dated March 29, 1995, and sent the matter back for assessment afresh. A preliminary objection has been raised to the maintainability of the writ petition by learned senior standing counsel for the respondents submitting that an alternative efficacious remedy by way of filing an appeal to the Income Tax Appellate Tribunal is available to the petitioner and Therefore this petition is liable to be dismissed at its threshold.

2. Learned counsel for the petitioner has submitted that initially an order of assessment was framed on March 27, 1992, against which the petitioner preferred an appeal and the Commissioner of Income Tax (Appeals) by his order dated August 5, 1992, set aside the assessment order remanding the same for framing afresh. The Assessing Officer has repeated his earlier mistake, also violated the direction given in the order of remand which is an act of indiscipline and judicial impropriety. He submitted that in the facts and

circumstances of the case the Commissioner of Income Tax (Appeals) should have annulled the assessment proceedings instead of directing a remand. Learned counsel also submitted that the petitioner is seeking a writ of certiorari wherein the bar of availability of alternate remedy is not attracted and the impugned order of assessment having been framed in violation of the principles of natural justice, is liable to be quashed in exercise of writ jurisdiction of this court without driving the petitioner to the necessity of pursuing the remedy of appeal under the Income Tax Act. Reliance is placed on the following decisions :

1. Union of India and others Vs. Kamlakshi Finance Corporation Ltd., .

2 Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, .

3. Kamlakshi Finance Corporation v. Union of India [1990] 47 ELT 231.

4. Amritsar Sugar Mills Co. Ltd. v. Union of India AIR 1983 Delhi 337.

5. Hindustan Aluminium Corporation Ltd. Vs. Controller of Aluminium and Others, .

6. Commissioner of Income Tax Vs. Sham Lal, .

7. Additional Income Tax Officer Vs. Ponkunnam Traders, .

8. Raja Jagdambika Pratap Narain Singh Vs. Central Board of Direct Taxes and Others, .

3. Learned senior standing counsel for the respondent has submitted that the present one is not a case where the order of assessment can be annulled. The order of remand was justified and it is only in a very limited category of cases where the power to annul an assessment can be exercised by the appellate authority, such as one, where the assessment is void ab initio, which the order in the case at hand is certainly not. Reliance was placed on COMMISSIONER OF Income Tax Vs. GYAN PRAKASH GUPTA., and Sant Baba Mohan Singh Vs. Commissioner of Income Tax, .

4. Having heard learned counsel for the parties we are satisfied that the present one is not a case where this court may feel persuaded to exercise its extraordinary writ jurisdiction bypassing the statutory remedy of appeal available to the petitioner. Whether or not the impugned order of assessment was liable to be annulled or an order of remand as made by the Commissioner of Income Tax (Appeals) was justified, are such questions as can very well be examined by the Tribunal exercising its appellate jurisdiction. We are not satisfied that the facts and circumstances of the case warrant exercise of writ jurisdiction of this court allowing the petitioner liberty of bypassing the statutory remedy of appeal.

5. The petition is dismissed on the ground of availability of an alternative efficacious remedy of appeal before the Tribunal. The petitioner is at liberty to file the appeal and seek condensation of delay in filing the appeal praying for exclusion of time lost in prosecuting this petition under Sections 5 and 14 of the Limitation Act.