

(2001) 07 DEL CK 0159

Delhi High Court

Case No: Income-tax Reference No"s. 103 to 105 of 1978

Narula Finance Pvt. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: July 11, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 147, 148, 2(35), 256(1)

Citation: (2001) 171 CTR 335 : (2002) 253 ITR 49 : (2001) 119 TAXMAN 230

Hon'ble Judges: Dr. Arijit Pasayat, C.J; D.K. Jain, J

Bench: Division Bench

Advocate: Non, for the Appellant; R.C. Pandey and Prem Lata Bansal, for the Respondent

Judgement

Arijit Pasayat, C.J.

At the instance of the assessed, the following questions have been referred by the Income Tax Appellate Tribunal, Delhi Bench-E ("the Tribunal" for short), u/s 256(1) of the Income Tax Act, 1961 ("the Act" in short), for the opinion of this court :

"(1) Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that as the official liquidator is appointed by the High Court and the notice u/s 148 was served on him after obtaining the permission of the High Court, it was not necessary for the Income Tax Officer to serve a notice on him, proposing to treat him as principal officer of the company ?

(2) Whether, on the facts and in the circumstances of the case, the notice u/s 148 served on the official liquidator, without notice u/s 2(35)(b) from the Income Tax Officer is bad in law and invalid ?"

2. The dispute relates to the assessment years 1962-63, 1963-64 and 1964-65. Since the point in issue is identical in all the three references, they are being dealt with together. The basic question that was raised was regarding the validity of the notices issued u/s 148 of the Act which were served on the official liquidator. The

background in which the notices were issued was that the company was ordered to be wound up by the High Court and the official liquidator was appointed by the court to take over all the affairs of the company and to carry out the process of winding-up. The Tribunal recorded a finding to the effect that there was no other principal officer and when the official liquidator had been appointed by the court, there was no necessity for further issuance of notice notifying the official liquidator that he was proposed to be treated as the principal officer. The Tribunal with reference to the background facts noticed that there was no other principal officer who could act on behalf of the company. Accordingly, it was held that all the notices were validly served. At the instance of the assessed the questions as set out above have been referred.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed.

4. From the materials on record it is clear that there was never any question raised as regards non-compliance with the requirements of section 2(35)(b) of the Act. On the contrary, the official liquidator participated in the proceedings and assessments were completed u/s 147 of the Act. That being the position, the Tribunal's conclusions are in order. As the conclusions have been arrived at on the factual background of the case, no question of law arises out of the order of the Tribunal. Accordingly, we decline to answer the questions referred.

5. References are returned unanswered.