

# **SUPREME COURT OF INDIA**

Commissioner of Income Tax, New Delhi

Vs.

D.L.F. United

C.A.Nos.6138-6139 of 1990

(S.P.Bharucha and N.Santosh Hedge JJ.)

12.01.1999

## **ORDER**

**S.P. BHARUCHA, J.**

1. These appeals by the Revenue arise upon the judgment dated 29-5-1985 of the Delhi High Court answering two sets of references made to it under Section 256(2) of the Income Tax Act, 1961 against the Revenue. Both sets of questions relate to Assessment Year 1962-63. The first set of questions relate to the assessee's quantum appeals; the other set relate to the consequential penalty proceedings. The questions read thus:

In ITC No. 29 of 1973

- (1) Whether there was any evidence before the Tribunal to justify the finding that profit of Rs. 2,10,000/- made by Raisina Cold Storage and Ice Co. Limited was the assessee's income?
- (2) Whether there was any evidence before the Tribunal to justify the finding that the payment of Rs. 41,039.67/- made to Surjit Singh, Sham Singh and Rajinder Singh was the assessee's income and was rightly taxed as such in its hands?
- (3) Whether there was any evidence before the Tribunal to justify the finding that the sum of Rs. 3,78,329/- was the income of the assessee liable to tax as such?
- (4) Whether, in any view of the matter, the sum of Rs. 3,78,329/- was the assessee's income during the relevant year ending on 31-10-1960?
- (5) Whether there was any evidence before the Tribunal to justify the finding that the payment of Rs. 10,402/- made to A.D. Gupta, Kartar Singh and S.K. Burman was the assessee's income?
- (6) If answers to questions (1), (2), (3) and (5) are in the affirmative, whether the findings of the Tribunal in respect of the amounts referred to in the said questions are otherwise legally justified?

In ITC No. 30 of 1973

- (1) Whether on the facts and in the circumstances of the case, the levy of penalty under Section

271(1)(c) of the Income Tax Act, 1961 was justified.

(2) If the answer to the aforesaid question is in the affirmative, whether on the facts and in the circumstances of the case, while levying penalty, the tax sought to be evaded is to be calculated by including in the income returned, the amounts shown in Part F of the return?

(3) Whether on the facts and in the circumstances of the case, for calculation of penalty, item of Rs. 3,78,379/- has to be disregarded as being income not liable to be returned?

(4) Whether on the facts and in the circumstances of the case, for purpose of calculation of the penalty, assessed income has to be modified by making suitable adjustment in the value of the closing stock consequent upon disallowance of a portion of the purchase price?

2. It is patent from the questions in the quantum appeal that they are questions of fact. The Income Tax Appellate Tribunal is the final fact-finding authority and it has decided against the assessee. The High Court ought not to have entered into a discussion of the evidence to come to a conclusion on facts contrary to that reached by the Tribunal. That it had done so is clear from the judgment under appeal. Thus, it stated:

The first question to be asked by us is whether there is any evidence to show that the sum of Rs. 2,10,000/- received by Raisina in assigning the right to purchase three-fourths share in the land can be treated as the income of the assessee-Company. The question is so framed as to require us to determine the evidence on which such a conclusion can be reached.

Again, it stated:

Therefore, the answer to the first question has to be that there is no evidence to show that the profit of Rs. 2,10,000/- earned by Raisina was the assessee's income.

3. These quotations are illustrative of the manner in which the High Court has proceeded in relation to all the questions in the first reference.

4. Mr. Salve, learned Counsel for the assessee submitted that what was considered by the High Court was really a question of law in that the Tribunal had not correctly appreciated the basis upon which it could be held that there had been "benami" transactions. The submission has to be rejected because the High Court has not differed from the Tribunal's finding that there had been "benami" transactions, as shown by the following sentence :

No doubt, these persons are benami of the assessee-Company in the sense that they were merely dummies to get the land transferred to the assessee-Company. However, they were necessary dummies because....

5. We have, therefore, no hesitation in setting aside the judgment of the High Court insofar as it relates to the first reference, i.e., the quantum appeal. The answers to the questions in the first reference are set aside and the reference is dismissed, affirming the view taken by the Tribunal.

6. Having regard to the answers that were given by the High Court on the quantum appeal, it came to the conclusion that the reference on the penalty appeal did not survive and it answered the

questions thereon accordingly. We do not have the record of the penalty appeal before us so as to be able to decide the reference thereon. Having regard to the conclusion that we have reached on the quantum appeal, it is clear that the reference on the penalty appeal shall have to be decided on the record on the basis of the Tribunal's findings of fact, for which purpose we set aside the order of the High Court thereon and remit the reference on the penalty appeal (ITC No. 30 of 1973) to the High Court to be heard and decided afresh.

7. The appeals are, accordingly, allowed. There shall be no order as to costs.