

SUPREME COURT OF INDIA

Commnr.of Income Tax, Indore

Vs.

Pawan Kumar Laddha

C.A.Nos.8914-8922 of 2003

(S.H. Kapadia and Swatanter Kumar JJ.)

06.04.2010

JUDGEMENT

S.H. Kapadia,J.

1. At the hearing of the appeal filed by the assessee before the Income Tax Appellate Tribunal against the order under Section 158BC of the Income Tax Act, 1961, the Revenue raised a preliminary objection as to the maintainability of the appeal on the ground that the assessee having not paid the admitted tax before filing the appeal, the appeal preferred by him should be dismissed as not maintainable. In this connection, reliance was placed by the Department in support of its preliminary objection on Section 249(4)(a) of the Income Tax Act, 1961 ['1961 Act', for short]. The Revenue invited the attention of the Income Tax Appellate Tribunal ['Appellate Tribunal', for short] to letter dated 19th October, 2001, wherein it was stated that the assessee had paid a sum of Rs.22,63,600/- before filing of the appeal out of Rs.26,47,800/- payable by the assessee in terms of his Block Returns. Before the Appellate Tribunal, the assessee objected to the above contention of the Department on the ground that Section 249(4) of 1961 Act cannot be read into Section 253(1)(b) which deals with the Appeals to the Appellate Tribunal and which falls in Chapter XX(B).

2. According to the assessee, Section 249, which deals with Appeals to the Commissioner (Appeals), falls in Chapter XX(A), whereas Appeals to the Appellate Tribunal under Section 253(1)(b) falls in Chapter XX(B).

3. After going through the provisions of Section 249(4)(a) and Section 253(1)(b) of 1961 Act, which, at the relevant time, dealt with an order passed by the Assessing Officer under Section 158BC(c) of 1961 Act, the Appellate Tribunal held that one cannot read Section 249(4)(a) into the provisions of Section 253(1)(b) of 1961 Act; that while Section 253(1) was an enabling provision giving right of appeal to the assessee to file an appeal to the Appellate Tribunal, there was no provision similar to Section 249(4)(a), which fell in Chapter XX(A) in Section 253(1)(b), hence, it was not a condition mandatory to the filing of the appeal to the Appellate Tribunal to pay undisputed tax amount as condition precedent. Consequently,

according to the Appellate Tribunal, there was no merit in the contention of the Department that an assessee must pay the admitted tax due before or at the time of filing of the appeal before the Appellate Tribunal.

4. Aggrieved by the decision of the Appellate Tribunal on the preliminary objection raised by the Department, the matter was carried in appeal under Section 260A of 1961 Act by the Department to the High Court of Madhya Pradesh, Indore Bench, which has affirmed the view of the Appellate Tribunal.

Hence, these civil appeals.

5. At the outset, we may state that, in these civil appeals, we are concerned with Block Period 1986-1987 to 14th September, 1995. This aspect is important because the law has since undergone several changes, particularly after 1st October, 1998, in the matter of grant of stay by the Appellate Tribunal under Section 253(7) of 1961 Act, which sub-section did not exist during the relevant period. Hence, this judgement is confined to the period prior to 1st October, 1998.

6. None appears for the assessee, though served.

7. The basic argument advanced by Shri V. Shekhar, learned senior counsel appearing on behalf of the Department, before us, was that Section 249(4), inter alia, states that no appeal under this Chapter [i.e., Chapter XX] shall be admitted unless at the time of filing of the appeal, the assessee has paid the admitted tax due on the income returned by him. According to the learned counsel, the present case is covered by Section 249(4)(a) of 1961 Act inasmuch as the assessee, in the present case, did file his Block Return in which he declared his undisclosed income of Rs.26,47,800/-.

8. The assessee, as stated above, however, paid only Rs.22,63,600/- and not the full amount of Rs.26,47,800/-, hence, according to the Department, the appeal preferred by the assessee was not maintainable. In this connection, learned counsel submitted that Chapter XX of 1961 Act dealt with Appeals and Revision. That Chapter had different Heads at the relevant time in the form of Appeals to Commissioner (Appeals) [Heading `A'], Appeals to the Appellate Tribunal [Heading `B'], Reference to High Court [Heading `C'], Appeals to the Supreme Court [Heading `D'] and Revision by the Commissioner [Heading `E'] etc. According to the learned counsel, in Section 249(4), the words used are "no appeal under `this Chapter' shall be admitted unless at the time of filing of the appeal, the assessee has paid the tax due on the income returned by him". The learned counsel emphasised the words "this Chapter" in Section 249(4) to mean the whole of Chapter XX and not Chapter XX(A) alone and, consequently, every appellant at the time of filing of appeal under Section 253(1) to the Appellate Tribunal was required to pay the admitted tax due on the income returned by him in terms of Section 249(4)(a) of 1961 Act as condition precedent failing which his appeal was not maintainable. Consequently, according to the learned counsel, in the present case, since the assessee had failed to pay the tax due on the income returned by him, his appeal to

the Appellate Tribunal under Section 253(1)(b) should have been dismissed as not maintainable.

9. We find no merit in the above arguments. At the outset, we may reiterate that, in these civil appeals, we are concerned with the period prior to 1st October, 1998. This judgment is confined strictly to the Block Period 1986-1987 to 14th September, 1995.

10. Chapter XX deals with "Appeals and Revisions".

11. Chapter XX is divided into Headings `A' to `F'. Section 246 enumerates a list of Orders of the Assessing Officer against which appeal(s) would lie. In that list of Orders, an appeal to the Appellate Tribunal under Section 253(1) is not mentioned. This is a very important indicia to show that each Heading in Chapter XX deals with a different subject- matter and one cannot read the words in Chapter XX(A) into the words used in Chapter XX(B). Chapter XX(A) deals with Appeals to the Deputy Commissioner and Commissioner (Appeals) whereas Chapter XX(B) deals with Appeals to the Appellate Tribunal. Similarly, Reference to the High Court lies under Chapter XX(C). It is for this reason that we have come to the conclusion that each Heading is a stand-alone item and, therefore, one cannot read the provision of Section 249(4)(a) into Section 253(1)(b) of 1961 Act. If the argument of the Department is to be accepted, then, in that event, no appeal or Reference could lie even to the High Court without complying with the provisions of Section 249(4)(a) of 1961 Act. This cannot be the Scheme of Chapter XX of 1961 Act.

12. There is one more reason why we are of the view that Section 249(4)(a) cannot be read into Section 253(1)(b) of 1961 Act.

13. Section 253(1)(b) refers to an assessee filing an appeal to the Appellate Tribunal against an order passed by an Assessing Officer under Section 158BC(c) of 1961 Act. Sub- section (b) came to be inserted into Section 253(1) by the Finance Act, 1995, and, that too, with effect from 1st July, 1995. The very concept of Block Assessment came to be inserted in the Income Tax Act, 1961, vide Finance Act, 1995, with effect from 1st July, 1995, whereas the words "this Chapter" in Section 249(4) came to be inserted in the Income Tax Act, 1961, vide Taxation Laws (Amendment) Act, 1975, with effect from 1st October, 1975. This is one more reason to confine the expression "this Chapter" in Section 249(4) to Chapter XX(A) without it being extended to Section 253(1)(b) which is there in Chapter XX(B). Further, under the Scheme of Chapter XX, as stated above, no appeal under Section 249(4)(a) in Chapter XX(A) was admissible without the assessee having paid the admitted tax due on the income returned by him. It appears that once Section 249(4)(a) is treated as a mandatory condition for filing an appeal before Commissioner of Income Tax (Appeals) and once that condition stood satisfied at the time of his filing an appeal to Commissioner of Income Tax (Appeals), then, there was no necessity for the assessee to once again pay the admitted tax due as a condition precedent to his filing the appeal before the Appellate Tribunal under Section 253(1)(b) of 1961 Act.

14. Lastly, one must keep in mind the principle that the doctrine of incorporation cannot be invoked by implication. A provision which insists on the assessee satisfying a condition of paying the admitted tax as condition precedent to his filing of appeal under Section 253(1)(b) of 1961 Act is a dis-enabling provision. Such a dis-enabling provision must be clearly spelt out by the Legislature while enacting the statute. The Courts have to be careful in reading into the Act such dis-enabling provisions as that would tantamount to judicial legislation which the Courts must eschew. It is for the Parliament to specifically say that no appeal shall be filed or admitted or maintainable without the assessee(s) paying the admitted tax due. That has been done only in the case of an appeal under Section 249(4)(a) of 1961 Act. We cannot read such a dis-enabling provision into Section 253(1)(b) of 1961 Act. If we do so, we are judicially legislating by reading something into the Act which is not there. In such a case, the question would also arise as to why the Appellate Tribunal should not be given the power to dispense with or waive such a condition? All this would come in the realm of legislation which can be done only by the Legislature. Hence, we find no merit in these civil appeals filed by the Department.

15. We are informed by the learned counsel appearing on behalf of the Department that, since the question of preliminary objection raised by the Department was pending determination in this Court, the Appellate Tribunal, Indore Bench, has, till date, not disposed of the appeal, bearing No.IT(SS) No.13/IND/1996, preferred by the assessee before it. If that is so, we direct the Appellate Tribunal to dispose of the assessee's appeal, bearing No.IT(SS) No.13/IND/1996, as expeditiously as possible, on merits, within a period of three months from today. The period of three months shall be counted from the date when the Appellate Tribunal receives this order. We direct the Registry to immediately send the original record and proceedings to the Appellate Tribunal. We express no opinion on the merits of the case.

16. Accordingly, these civil appeals filed by the Department are dismissed with no order as to costs.