

Court No. - 35

Case :- INCOME TAX APPEAL No. - 264 of 2017

Appellant :- Vikram Singh

Respondent :- Commissioner Of Income Tax Bulandshahar

Counsel for Appellant :- Deepak Kumar Pal

Counsel for Respondent :- S.S.C.,Piyush Agarwal

Hon'ble Bharati Sapru, J.

Hon'ble Dinesh Kumar Singh, J.

1. This appeal and other connected appeals under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) have been filed by different assessees against the common order dated 18th July, 2017 passed by the Income Tax Appellate Tribunal, Delhi Bench “SMC”, New Delhi in ITA Nos. 616/Del/2017, 617/Del/2017, 618/Del/2017, 619/Del/2017, 620/Del/2017, 621/Del/2017, 622/Del/2017, 623/Del/2017, 624/Del/2017 and 625/Del/2017 respectively.
2. The relevant Assessment Year (hereinafter referred to as “A.Y.”) is 2008-09.
3. The issue involved in these appeals is similar, having identical facts and, therefore, the arguments in these appeals have been heard together and they are being decided by this common order for the sake of convenience and brevity.
4. The brief facts, as emerge out from the record, are that the appellant-assessee sold two pieces of land with 21 other co-owners situated at Gata Nos. 202A and 203A of Khata No. 07 of Village Jokhabad, Sikandrabad, District Bulandshahar and received an amount of Rs.1,96,533.00 and sold share in property 202B and 203B for an amount of Rs.33,828.00.

Total consideration received by the appellant-assessee was an amount of Rs.2,30,361.00.

5. The appellant-assessee did not file any return of his income. The Assessing Officer (hereinafter referred to as "A.O.") issued notice dated 24th March, 2015 under Section 148 of the Act.

6. In response to the said notice, the appellant-assessee filed return of income, declaring agricultural income of Rs.15,000.00 and share of sale proceeds of the above two pieces of land of Rs.2,30,361.00 + 33,828.00 and claimed the same as an exempt income on the ground that income of sale of agricultural land was not covered by provisions of Section 2(14) of the Act.

7. The A.O., however, treated the receipt of sale consideration of Rs.1,96,533.00 as income on the basis of Long Term Capital Gain making an addition of Rs.1,87,136.00 and accepted agricultural income of Rs.15,000.00. The A.O. completed the assessment at Rs.1,87,140.00, excluding the agricultural income of Rs.15,000/- under Section 143(3)/147 of the Act vide assessment order dated 10th December, 2015.

8. Aggrieved by the aforesaid assessment order, the appellant-assessee, Shri Vikram Singh filed appeal before the Commissioner of Income Tax (Appeals), Ghaziabad (hereinafter referred to as "the C.I.T.(A)"), who vide his order dated 30th November, 2016 dismissed the appeal of the appellant-assessee with enhancement.

9. Aggrieved by the order passed by the C.I.T.(A) the appellant-assessee preferred appeals before the Tribunal.

10. The Tribunal vide common impugned order has dismissed the appeal of the appellant-assessee and others. The appellant-assessee took additional ground that the notice under section 148 of the Act dated 24th March, 2015 was not issued after taking approval from the Joint Commissioner of Income Tax and, therefore, the assessment order dated 10th December, 2015 was without jurisdiction. The Tribunal held that the learned counsel for the assessee could not produce any relevant case law to substantiate his ground and, therefore, additional ground was rejected.

11. This Court, while admitted the appeal on 18th September, 2017, passed the following order:-

“Hon'ble Pankaj Mithal, J.

Hon'ble Umesh Chandra Tripathi, J.

Heard Shri Dinesh Mohan Sinha, Shri Rajeev Deora and Shri Sant Ram Bhti learned counsel for the appellant and Shri Piyush Agarwal, learned counsel for the respondent.

The contention is that before issuance of notice under Section 148 of the Income Tax Act, the sanction contemplated under Section 151 of the Income Tax Act [hereinafter referred to as "the Act"] was not taken and despite the above question raised during the court of argument before the Tribunal the same has not been considered and decided.

In view of the above submission following substantial questions of law arises for consideration in this appeal:-

whether the notice issued under Section 148 of the Act would stand vitiated for want of sanction

under Section 151 of the Act and that the Tribunal was justified in ignoring the above aspect despite specific argument raised in the appeal.

Admit.

Since the respondent is represented. There is no need for any notice.

List in the normal course for final hearing.”

12. There is no dispute that the notice under Section 148 of the Act was issued to the appellant-assessee with prior sanction of the Additional Commissioner of the Income Tax.

13. Heard Mr. Suyash Agarwal, learned counsel appearing for the appellant-assessee, and Mr. Piyush Agarwal, learned counsel appearing for the respondent-department.

14. The only contention raised by the learned counsel for the appellant-assessee is that the notice was not issued with the prior sanction of the Joint Commissioner, but sanction was accorded by the Additional Commissioner and, therefore, notice under Section 148 of the Act issued by the A.O. was without jurisdiction.

15. Section 2 of the Act is Definitions Section. Clause (28C) of Section 2 of the Act defines the word “Joint Commissioner” and explains it means a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under sub-section (1) of Section 117.

16. Thus, the Joint Commissioner includes an Additional Commissioner as well. The issue is otherwise covered by the judgments of various High Courts, which are as follow:-

I. *Dharam Pal Singh Rao Vs. Income-Tax Officer and another, [2004] 271 ITR 223 (All);*

II. *Arun Kumar Maheshwari and another Vs. Income-Tax Officer, [2006] 285 ITR 179 (All); and*

III. *Smt. Maya Rastogi Vs. Commissioner of Income-Tax and others.*

17. In view of the aforesaid discussions, we find no merit in this appeal and other connected appeals which are, thus, dismissed.

18. The question of law is answered in favour of the Revenue and against the assessee.

Order Date :- 3.8.2018

MVS Chauhan/-