ORDER SHEET
ITA 476/2007
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction(income tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA IV
Versus
RITIKA LIMITED

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ASHA ARORA

Date : 16th May, 2016.

Mr. S.B. Saraf, Adv. Appears.

Mr. J.P. Khaitan, Sr. Adv., appears with Mr. Bhowmik, Adv.

The Court : The subject matter of challenge in the appeal is a judgment and order dated March 23, 2007, by which the learned Income Tax Appellate Tribunal, "D" Bench, Kolkata, allowed the I.T.(S.S)A. No.158/Kol/2004, preferred by the assessee. The aggrieved revenue has come up in appeal.

The following question of law was formulated at the time when the appeal was admitted:

> "Whether in the circumstances of the case, the learned Income Tax Appellate Tribunal has erred in law in passing the impugned order without appreciating that Section 158BB(2) specifically empowers the Assessing Officer to apply the provisions of Section 68 and other Sections for computing the income of the block period?"

Mr. Saraf, learned Advocate appearing for the revenue-appellant, submitted that the question which was suggested and formulated at the time of admission of the appeal is not the question which really arises for determination. According to him, the question which arises for determination is as follows:

> "Whether the order of assessment was passed within the period of two years after conclusion of the search?"

Even assuming that the question now suggested by Mr. Saraf is the real question which arises for consideration, the same does not appear to have any substance for the following reasons:

(a) Admittedly, the search was undertaken on October 15, 1998.

(b) Admittedly, the restraint order was issued also on October 15, 1998 which was valid for a period of sixty days.

(c) The restraint order was extended for a period of thirty days, i.e. to say, upto January 15, 1999.

(d) It is not in dispute that the restraint order thereafter was not extended.

(e) As a matter of fact, after January 15, 1999, nothing took place.

(f) All that the revenue thereafter did was to call at the house of the assessee on November 21, 2000 for the purpose of recording that the search was at an end.

The question is, is the period of limitation of two years to be reckoned from November 21, 2000?

The learned tribunal has answered this question in the negative relying upon a large number of judgments of various High Courts.

We find that the judgment rendered by the learned Tribunal is unimpeachable. The fact that the restraint order was not extended after January 15, 1999 is a pointer to show that the search was at an end on January 15, 1999 itself. It is not within the power of the revenue to keep a matter pending for as long as they desire. The object is to dispose of the proceedings as expeditiously as possible. In this case, almost two years after January 15, 1999, the officers of the revenue called at the house of the assessee for the purpose of recording that the search was at an end. Question may be raised, could they have done it after ten years? The answer has to be in the negative. The question as to when did the search come to an end has to be answered on the basis of the attending facts and circumstances of each case.

This Court had an occasion to consider a somewhat identical issue in the case of ***Navin Kumar Agarwal -vs- Commissioner of Income Tax, reported in [2015] 375 ITR 541 (Cal).*** What had happened in that case was that the officers of the revenue called at the house of the assessee and recorded that the search was at an end and simultaneously made over the keys and vacated the restraint orders. It is in those circumstances that this court held that the search should be deemed to have come to an end on that date.

But the facts of this case are altogether different. Here, the restraint order was not extended after a period of three months. That means, the search was also abandoned. Therefore, the search came to an end. The search did not stand revived when the officers called at the house of the assessee merely for the purpose of recording that the search was at an end.

We, therefore, find that the order passed by the learned Tribunal is a perfectly justified order. Therefore, the appeal fails. The first question is not pressed and the question formulated today is answered in the negative and in favour of the assessee.

(GIRISH CHANDRA GUPTA, J.)

(ASHA ARORA, J.)

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