



IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3643/2012

ADINATH CAPITAL LTD. .... Petitioner

Through Mr. Ashok Kumar, Advocate.

versus

COMMISSIONER OF INCOME TAX AND ANR.

..... Respondents

Through Ms. Suruchi Aggarwal, Sr.

Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

O R D E R

01.06.2012

1. The assessee's case for the assessment year 1997-98 was taken up for scrutiny assessment and an

assessment order under Section 143(3) of the Income Tax Act, 1961 (Act, for short) dated 16th March,

2000 was passed. It is noticed that addition of Rs.37,40,568/- was made on account of speculative loss

under Section 73 of the Act. In the computation sheet because of additions made, interest under Section

234B of the Act, which is automatic, was also levied.

2. The assessment order was made subject matter of challenge in the appellate proceedings under

Section 250 before the Commissioner of Income Tax (Appeals) and then before the Income Tax

Appellate Tribunal under Section 254 of the Act. The tribunal refused to entertain the appeal on the

question of levy of interest under Section 234B on the ground that this issue or question was not raised

before the first appellate authority.

3. Then after about ten years, the assessee filed a letter dated 18th October, 2010 before the

jurisdictional Commissioner, i.e., Commissioner of Income Tax, Delhi-I and claimed that this was a

revision petition under Section 264 of the Act for waiver of interest under Section 234B of the Act. The

jurisdictional Commissioner has dismissed the same as not maintainable as the assessee had already

availed the remedy of appeal. The Jurisdictional Commissioner has rightly relied upon Section

264(4)(c) of the Act. Once an assessment order itself is made subject matter of challenge before the

appellate authorities, the revision petition under Section 264 is not maintainable. The assessment order

not only includes the order passed by the Assessing Officer but also the computation sheet on the basis

of which the demand is made.

4. Bar under Section 264(4)(c) of the Act, which imposes an absolute prohibition against access of

revisional jurisdiction, comes into operation and applies when the assessment order is made subject

matter of challenge before the appellate authority. It does not matter whether a particular aspect or

issue is challenged or whether a particular relief has not been prayed for [see CWD versus Kasturbai

Walchand, (1989) 177 ITR 188 (SC)]. The order of the Assessing Officer cannot be divided into two

parts with one part being made subject matter of challenge before the appellate authority and the other

part being made subject matter of challenge under the revisional jurisdiction. Section 264(4)(c) of the

Act does not permit such bifurcation.

5. In the present case, as noticed above, the petitioner had filed an appeal against the assessment order.

In the appeal itself he could have raised the issue and contention that interest could not have been

charged under Section 234B in the computation sheet. It appears that he did not raise this contention

before the first appellate authority but raised the contention before the tribunal. Even before the

tribunal no application was filed for raising a new ground of appeal. The tribunal, therefore, dismissed

the said ground, inter alia, recording that this ground was not raised before the first appellate authority.

6. In *Kalyan Kumar Ray versus CIT*, (1991)191 ITR 634 (SC) it has been observed that assessment is

one integrated process involving not only the assessment of total income but also determination of tax.

The latter is as crucial as the former. In terms of the assessment order, the Assessing Officer has to

issue demand notice under Section 156 of the Act. The statute does not require that both computation

of total income as well as sum payable should be done on the same sheet of paper. No particular form

is prescribed.

7. Without expressing any opinion on whether or not any other remedy is available to the petitioner, we

do not find any infirmity in the impugned order passed by the jurisdictional Commissioner and

accordingly the writ petition is dismissed.

SANJIV KHANNA, J.

R.V. EASWAR, J.

JUNE 01, 2012