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ORDER SHEET

ITAT 165 of 2015
GA No.3718 of 2015
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-I
Versus
KPC MEDICAL COLLEGE AND HOSPITAL

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : 19th June, 2018.

Mr. Animesh Kanti Ghosal, Sr. Adv., Mr. Soumitra Mukherjee, Adv. for the appellant.

Mr. J. P. Khaitan, Sr. Adv., Ms. Swapna Das, Mr. Siddharth Das, Advocates for the respondent.

The Court : The interpretation of the Explanation to Section 251 of the Income Tax Act, 1961 falls for consideration in this case.

The assessee was discovered to have not disclosed the donations received by the assessee or claimed deduction thereon that the assessee was not entitled to. In course of reassessment proceedings, the assessee was found liable to pay additional tax. The tax was paid by the assessee without challenging the relevant order.

Proceedings for imposing penalty on the assessee were taken up under Section 271 of the Act and the maximum penalty was imposed on the assessee. The assessee carried such order in appeal before the Commissioner (Appeals). In course of adjudicating on the order of penalty, the Commissioner (Appeals) perceived that the assessment of tax was erroneous and required the Assessing Officer to reopen the matter to ascertain whether further income had escaped tax. The Commissioner (Appeals) also affirmed the penalty imposed on the assessee.

The assessee carried such order of the Commissioner (Appeals) before the Appellate Tribunal.

The Appellate Tribunal did not disturb the penalty that was imposed on the assessee but found that the further direction issued by the Commissioner (Appeals) for the Assessing Officer to reopen the matter and again assess whether some income had escaped assessment was unwarranted in the limited context of the appeal that was before the Commissioner (Appeals).

The Explanation to Section 251 of the Act provides as follows :

> "*Explanation:* In disposing of an appeal, the Principal Commissioner or Commissioner (Appeals) may consider and decide any matter arising out of proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Principal Commissioner or the Commissioner (Appeals) by the appellant*"*.

The key expression in the Explanation is "any matter arising out of the proceedings in which the order appealed against was passed". As would be evident from Section 251(1) of the Act, an appeal against an order of assessment is covered by clause (a) thereof and an appeal against an order imposing a penalty is covered by clause (b) thereof. In other words, independent appeals arise out of orders of assessment and orders imposing any penalty. In this case, the order that was before the Commissioner (Appeals) was an order imposing a penalty and not an assessment order. If the assessment order that resulted in the penalty proceedings being instituted was before the Commissioner (Appeals), the direction may have been justified. However, in the appeal arising out of the order imposing the penalty, the matter pertaining to some other income escaping assessment did not fall within the purview of the expression "any matter arising out of proceedings in which the order appealed against was passed".

Accordingly, the view taken by the Appellate Tribunal in the context of the limited authority exercised by the Commissioner (Appeals) in course of adjudicating an order imposing a penalty, does not warrant any interference.

ITAT 165 of 2015 and G. A. 3718 of 2015 are dismissed.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY, J.)

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