

Court No. - 35

Case :- INCOME TAX APPEAL No. - 375 of 2006

Appellant :- Commissioner Of Income Tax, Ghaziabad And Another

Respondent :- Shri Rajeev Gupta

Counsel for Appellant :- S.C.,C.S.C.,D.Awasthi

Hon'ble Bharati Sapru,J.

Hon'ble Vinod Kumar Misra,J.

Service is deemed to be completed.

This is an appeal under Section 260-A of the Income Tax Act, 1961 filed by the Commissioner of the Income Tax Appellate Tribunal, New Delhi in I.T. (S.S.)A. No. 146/Del/2001.

The appeal relates to the Block Period of Financial Year 1987-88 to 1996-1997 and 1.4.1997 to 19.12.1997.

The questions of law referred to are hereunder:-

"1. Whether on the facts and circumstances, the Tribunal is legally justified in confirming the order of CIT (Appeals) in deleting the addition of Rs.10,50,000/- on account of unexplained investment in the residential house at Vapi?

2. Whether the Tribunal is legally justified in deleting the addition of Rs.36,83,000/- in respect of undisclosed share of Omega Laboratories Ltd. in various names, which were found and seized from the residence of the assessee at Vapi"

The facts of the case are that the search was conducted under Section 132 on the business and residential premises of the assessee on

19.12.1997. The A.O. issued a notice under Section 158BC on 24.7.1998 requesting the assessee to file return on Form No. 2B within 20 days of service of the notice. The assessee filed the return for the block period of 7.7.1999 and in the return so filed an undisclosed income was shown as NIL. Subsequently, the wife of the assessee after search and seizure opted for the Voluntary Disclosure of Income Scheme, 1997 (in short 'VDIS') on 31.12.1997 which was accepted by the Department as genuine and good.

In view of the aforesaid, the Tribunal has taken view that once VDIS was accepted as good and true then the same could not be assessed in the hands of the assessee once again.

Learned counsel for the Department, Sri Subham Agarwal has very fairly placed before this Court the decision of *Karnataka High Court in Income Tax Appeal No. 519 of 2008 (Commissioner of Income Tax & others Vs. Sri Kundanmal Babulal Jain)* decided on 8.7.2014, wherein these very questions were answered in favour of the assessee. Paragraph Nos. 11 and 12 of the judgement are hereunder:-

"**11.** From the aforesaid provisions, it is clear, once a person files an application under Section 64 in accordance with the provisions of Section 65 in respect of any income chargeable to tax under the Act, which earlier he has not offered it to tax, the Commissioner on consideration of such application can grant a certificate to him setting forth the particulars of voluntary disclosed of income and the amount of income tax paid in respect of the same. Once such a certificate is

granted, the amount of the voluntary disclosed income shall not be included in the total income of the declarant for any assessment year under the Income Tax Act. Once a particular income is included in the income of the person and taxed any such person pays the tax, the same income cannot be taxed in the hands of another persons. In the instant case the amount has been taxed in the hands of HUF. Once the tax is paid for that undisclosed income, again the same income cannot be taxed in the hands of the member of the HUF, that is assessee.

12. Therefore, in the light of the provisions of the aforesaid VDIS as well as the provisions of the Act, the Appellate Authorities were justified in holding that a long as the certificate is in force, the income which was the subject matter of the certificate cannot be taxed not only in the hands of the declarant but also in the hands of any other person. If such a certificate is obtained by misrepresentation misleading the Commissioner, the proper course would be to recall the said certificate. No such steps were taken. The certificate is still in force. When that being the case, the same income cannot be assessed over and again in the hands of the individuals who are the members of the HUF. Therefore, the order passed by the Tribunal as well the Appellate Authority is in accordance with law and do not suffer from any legal infirmity calling for interference."

Thus, in view of the fact that in the present case also the VDIS was accepted as correct and genuine, the income could not have been added once again in the hands of the assessee.

The substantial question of law sought to be answered is, therefore, answered in favour of the assessee and against the Department.

It may be noted that the VDIS filed by the Company on 31.12.1997 was also accepted by the Department. Therefore, for both the sources of undisclosed income as alleged by the Department, the VDIS, had been accepted and the certificate had not been cancelled and both were accepted.

The appeal is dismissed, as above.

Order Date :- 24.10.2016

AS