



10

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No.65/2009

Date of Decision: 16th November, 2009.

COMMISSIONER OF INCOME TAX, DELHI-IV Appellant
Through: Mr. N.P. Sahni, Advocate.

Versus

H.B. STOCK HOLDINGS LTD. Respondent
Through: Mr. Santosh K. Aggarwal,
Advocate.

%

CORAM**HON'BLE MR. JUSTICE A.K. SIKRI****HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J U D G M E N T**A.K. SIKRI, J (ORAL)**

1. The respondent assessee herein had filed return of income for the assessment year 1995-96 on 13.11.1995. It was processed under section 143(1) of the Income Tax Act and accepted as such. In this return the assessee had also shown income from short term capital gain from the sale of certain shares. As per the assessee these shares were held as investment and the profits which accrued from the sale of these shares was, therefore, taken as capital gain. However, thereafter, notice was served on the assessee under Section 148 of the Act on 26.7.2000. In this notice, as would be taken note of in detail at the appropriate stage, the main reason for re-opening of the assessment was that the aforesaid shares were to be treated as



should have been included as income from business and taxed as such. On this ground, in the notice it was mentioned that the income escaped assessment. Re-assessment order was passed thereafter which was successfully challenged by the assessee before the CIT (Appeal) and appeal preferred by the Revenue has been dismissed by the Income Tax Appellate Tribunal (ITAT) vide orders dated 28.3.2008 and it is this order against which present appeal is preferred.

2. We may mention at the outset that the ITAT has quashed the proceedings under Section 147/148 of the Act on the ground that notice for re-assessment served upon the assessee was not on the basis of a valid reason. In order to find out the rationale for arriving at such a conclusion, the following intervening facts and events which occurred between the passing of original assessment orders under Section 143(1) and issuance of notice for re-assessment under Section 148 needs a mention.

3. It so happened that the premises of the assessee were searched on. As a result of this search and seizure of certain documents, notice for block assessment under Section 158 BC of the Act was served upon the respondent. Assessment pursuant thereto was made on 31.8.1999. In this assessment order passed under Section 158BC of the Act, one of the items of addition was in fact on account of sale of aforesaid shares treating the same as stock-in-trade instead of investment. The assessee had taken that matter in appeal. CIT (A) allowed the appeal of the assessee precisely on this aspect. Order dated 31.3.2000 passed by the CIT(A) has been produced. A perusal of that order would clearly demonstrate that one of the specific grounds raised by the assessee herein was against addition of



147(iv) of the Act. As mentioned above this addition was made on the same ground, viz., aforesaid income from the sale of shares was to be treated as 'business income' and not 'capital gain' as the shares were held as stock-in-trade and not as investment. This ground raised by the assessee was decided in favour of the assessee in the following words.

“33. The AO has not mentioned any entry in the books of accounts or in the other documents seized from the assessee's premises which would indicate that the scripts shown as Investment were in fact not Investment but Stock in Trade. He has also not discussed as to how the claim of deduction has been found to be wrong as a consequence of the material fathered during the search in the assessee's premises. Beside, the AO has not disputed the claim of the appellant that the scripts were shown as Investment and not as Stock in Trade in the books. In fact the seized books gives separate account of Investment and Stock in Trade. In the absence of any entry in the seized books showing that the particular script were actually Stock in Trade and not Investment as shown in the balance sheet, there was no justification for withdrawing the exemption U/S 47(IV) allowed to the appellant in course of proceedings. U/s 143(1)(a)/143(3). Appellant gets relief of Rs.381,24,167/-“

4. Thus, categorical finding of fact was arrived at by the CIT(A) that scrips were actually investment and not stock-in-trade and



aforesaid order of the CIT(A) in mind, the irresistible conclusion would be that the original assessment could not be reopened under Section 148 of the Act on the same premise, viz., shares were kept by the assessee herein as stock-in-trade and not investment.

5. After going through the reasons for issuance of notice under Section 148, one finds that there is a detailed discussion about the aforesaid block assessment and even reference to the orders passed by the CIT(A) is made by the Assessing Officer. In fact the aforesaid portion of the order of the CIT(A) has been extracted by the A.O. also in his reasons recorded under Section 148 of the Act. After recording the same the A.O. observed that CIT(A) had given a finding that in the absence of any entries in the seized books showing that the particular scrip was actually stock-in-trade and not investment. After extracting the aforesaid portion, the A.O. observed that this finding indicates that CIT(A) has not disputed the fact that shares were held as stock-in-trade. Commenting upon this, the Income Tax Appellate Tribunal has stated that it is the distorted reading of the order of the CIT(A) passed in those block assessment proceedings. We agree with this observation of the Income Tax Appellate Tribunal. Reading of the order of the CIT(A) in block assessment proceedings clearly demonstrates that the CIT(A) held that stocks were rightly shown by the assessee as investment in his books of accounts which could not be treated as stock-in-trade. We are of the opinion that in view of this categorical finding of the CIT(A) in block assessment proceedings which had attained finality, notice under Section 148 predicated on the same ground was impermissible.

6. In view of the order of the CIT(A) which was even upheld



under Section 148, on the ground which had been dealt with specifically and decided in favour of the assessee.

7. It is trite law that even where two views are possible, proceedings under Section 148 cannot be initiated. In the instant case, on the other hand, there is a categorical finding of the CIT(A) on this very aspect which was upheld by the ITAT also. We, thus, find that no question of law arises for determination in the present appeal and, therefore, dismiss this appeal.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

NOVEMBER 16, 2009

aj