

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

WTA No. 39 of 2009 (O&M)

Date of Decision: August 6, 2009

Commissioner of Wealth Tax-II, Amritsar

...Appellant

Versus

M/s Rai Bahadur Kishore Chand & Sons (Properties) Pvt. Ltd.,
Amritsar

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE JASWANT SINGH

Present: Ms. Naveener P.K. Singh, Sr. Standing Counsel
Income-tax, for the appellant.

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

M.M. KUMAR, J.

This order shall dispose of WTA Nos. 39, 40, 41 and 49 of 2009 as common question of law and facts are involved. These appeals have been filed under Section 27A of the Wealth Tax Act, 1957 (for brevity, 'the Act'). In WTA Nos. 39 and 40 of 2009 subject matter of challenge is the common order dated 5.10.2007 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal') in WTA Nos. 1 & 2 (ASR)/2006, filed by the

assessee-respondent under Section 24 of the Act against the order dated 21.11.2005 passed by Commissioner of Wealth Tax (Appeals), Bathinda in respect of assessment years 1997-98 and 1998-99. The other two appeals, namely WTA Nos. 41 and 49 of 2009 have been filed against the common order dated 17.7.2008 passed by the Tribunal in WTA Nos. 1 & 2 (ASR)/2008, filed by the revenue against the deletion of penalties imposed under Section 18(1)(c) of the Act in respect of assessment years 1997-98 and 1998-99. It is pertinent to notice that along with the appeals applications under Section 151 CPC seeking condonation of delay in re-filing the appeals have also been filed.

The Tribunal has come to the conclusion that the notices under Section 17(1) of the Act were issued in the wrong name, which were different than that of the assessee. According to the Tribunal the fact that the assessee-respondent duly received and complied with the notices would still not confer any jurisdiction on the Assessing Officer. In that regard, the Tribunal has placed reliance on the Division Bench judgments of Calcutta High Court rendered in the cases of **Income Tax Officer v. Chandi Prasad Modi**, [1979] 119 ITR 340 (Cal) & **Commissioner of Income Tax v. Bibhuti Bhushan Mallick**, [1987] 165 ITR 107 and another judgment of Allahabad High Court in the case of **Madan Lal Agarwal v. Commissioner of Income Tax, Kanpur**, [1983] 144 ITR 745.

At the outset we have asked learned counsel for the appellant-revenue as to whether any appeal was preferred against two

Division Bench judgments of Calcutta High Court and the other judgment of Allahabad High Court. There is no satisfactory answer and it appears that all the three Division Bench judgments of Calcutta and Allahabad High Court have attained finality. The principle of consistency has to be followed by the revenue. It cannot pick up one case and file the appeal and accept the verdict of the Tribunal or the High Court in a similar matter. Once the question has been answered by the High Courts of Calcutta and Allahabad then we do not feel persuaded to entertain the appeal as no substantial question of law warranting its admission would arise for determination. According to Section 27A of the Act the High Court could admit the appeal only on a substantial question of law, which in the present case is not available and the matter is covered by the aforesaid three Division Bench judgments of Calcutta and Allahabad High Court.

No other argument has been raised.

Accordingly, the appeals are dismissed.

In view of the fact that the appeals have been dismissed on merit, we do not feel the necessity of passing any order on the applications seeking condonation of delay in re-filing of the appeals.

(M.M. KUMAR)
JUDGE

(JASWANT SINGH)
JUDGE

August 6, 2009

Pk Kapoor