

Court No. - 37

Case :- WRIT TAX No. - 901 of 2004

Petitioner :- M/S Das Cold Storage Thru' Its M.D.

Respondent :- Asstt. Commissioner, Income Tax (Osd) & Others

Petitioner Counsel :- Suyash Agarwal, Rakesh Ranjan Agarwal

Respondent Counsel :- C.S.C., A.N. Mahajan, Ashok Kumar, B. Agrawal, D. Awasthi, G. Krishna, S. Chopra

Hon'ble Rajes Kumar, J.

Hon'ble Pankaj Mithal, J.

By means of the present writ petition, the petitioner is challenging the notices issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for the assessment years 1997-98 and 1999-2000.

The brief facts giving rise to the present writ petition are that the petitioner is running a cold storage. In para 8 of the writ petition, it is stated that the petitioner is maintaining its account on mercantile basis and the income tax returns have been filed for the aforesaid assessment years. The returns have been processed and intimations were issued under Section 143 (1) of the Act. The notices under Section 148 of the Act have been issued for the years under consideration after recording reasons. The reasons for the assessment year 1997-98 is annexure-7 to the writ petition and the reasons for the assessment year 1999-2000 is annexed along with the counter affidavit. In the reasons, it is stated that though the petitioner had maintained books of account on mercantile basis, the rents for the months of February and March, 1997 have been accrued in the assessment year 1997-98 but have not been disclosed. Likewise, for the assessment year 1999-2000, the rents for the months of February and March, 1999 have not been disclosed in the assessment year 1999-2000 and, therefore, there were escaped assessments.

Heard Sri R.R. Agrawal, learned counsel for the petitioner and Sri Ashok Kumar, learned Standing Counsel.

Learned counsel for the petitioner submitted that since the year 1990-91, the petitioner had adopted method of accountancy in accordance to notification issued by the State Government in the case of cold storage and had disclosed the rent in the assessment year in which farmer approached to get their potatoes released and made the payment. He submitted that the similar dispute has arisen in the assessment year 2000-01 and in the appeal, the claim of the petitioner has been accepted vide order dated 03.03.2004 and, therefore, the initiation of proceedings are not justified. He further submitted that in fact in respect of the rent, the petitioner had not maintained mercantile system of accountancy and this plea of the petitioner has been examined and accepted by the Commissioner of Income Tax (Appeals) for the assessment year 2000-01.

Sri Ashok Kumar, learned Standing Counsel submitted that as per the petitioner's own admission mercantile system of accountancy has been adopted, therefore, the rent should be disclosed on accrual basis and since for the months of February and March, 1997 and 1999 admittedly the rent had

been accrued, thus, such rent should have been disclosed by the assessee in the assessment years 1997-98 and 1999-2000 respectively but the petitioner had not disclosed such rent in the relevant assessment years, therefore, there were escaped assessments and the proceedings have been rightly initiated. He further submitted that the appellate order passed for the assessment year 2000-01 is not relevant for the years under consideration, inasmuch as the appellate order has not been accepted by the Department and the appeal against the said order has been filed.

Having heard learned counsel for the parties, we have perused the reasons recorded for the assessment years 1997-98 and 1999-2000 and other documents. In writ jurisdiction under Article 226 of the Constitution of India, this Court can only examine whether there was material to issue notice under Section 148 of the Act. We have perused the reasons recorded for the initiation of proceeding. In para 8 of the writ petition, the petitioner has admitted that it had maintained the books of account on mercantile basis. It is not in dispute that the rent for the months of February and March, 1997, which had been accrued have not been disclosed in the assessment year 1997-98 and for the months of February and March, 1999, which had been accrued, have not been disclosed in the assessment year 1999-2000. Therefore, we are of the view that there was material to form belief that there was escaped assessment for both the assessment years and the notices issued under Section 148 of the Act have rightly been issued.

So far as plea of the petitioner that in fact, the petitioner had not maintained mercantile system of accountancy in respect of rent and had maintained the books of account in accordance to notification issued by the State Government for the cold storage, we can not examine this plea of the petitioner at this stage. It will be open to the petitioner to raise this plea before the assessing authority.

For the reasons stated above, the writ petition is devoid of any merit and is accordingly, dismissed.

Order Date :- 1.4.2010

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