

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.02.2013

+ ITA 81/2013

COMMISSIONER OF INCOME TAX Appellant

versus

JASWINDER SINGH AHUJA Respondent

Advocates who appeared in this case:

For the Appellant : Ms Suruchi Aggarwal, Sr. Standing Counsel with Mr
Manish Kumar, Advocate.

For the Respondent : None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

This appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') has been preferred by the revenue being aggrieved by the order dated 25.06.2012 passed by the Income Tax Appellate Tribunal in ITA No.3417/Del/2009 pertaining to the assessment year 2002-03. The present proceedings arose out of the penalty order passed by the assessing officer under section 271(1)(c) of the said Act on 24.06.2010.

2. The facts are that the respondent/ assessee was employed with M/s Cadence Design Systems India Pvt. Ltd. and as a part of his employment he received stock options by virtue of an agreement dated 17.09.1992 with Cadence Designs System, USA. During the year in question the assessee sold the stock options and received ₹1,05,19,631/-. The same was declared by the respondent/ assessee in his return as long term capital gains. However, the assessing officer took a different view and assessed the same as short term capital gains and also directed initiation of penalty proceedings under section 271(1)(c) of the said Act.\

3. In the quantum proceedings the Commissioner of Income Tax (Appeals) deleted the addition made by the assessing officer on account of the change in treatment from long term capital gains to short term gains. The revenue went up in appeal before the Tribunal and the Tribunal allowed the appeals and upheld the view taken by the assessing officer. In other words the Tribunal settled the issue with regard to the manner in which the gains from the sale of stock options were to be considered. The Tribunal reversed the view taken by the Commissioner of Income Tax (Appeals) and held that the said gains were short term capital gains as held by the assessing officer.

4. In the penalty proceedings the assessing officer imposed a penalty of ₹15,69,445/-. The Commissioner of Income Tax (Appeals) deleted the said penalty on the ground that the issue was debatable at the time when the assessee filed his return and, therefore, he could not have been held to have furnished inaccurate particulars or to have concealed his income. This view has been upheld by the Tribunal by virtue of the order dated 25.06.2012. The Tribunal held as under: -

“5. In the assessee’s case, evidently, there is no furnishing of any inaccurate particulars. It is not the case of the Revenue that the assessee has either concealed any fact or has submitted any wrong or incorrect fact. It is only the question of opinion whether the income from sale of stock option is assessable as short term capital gain or as long term capital gain. In view of the above, respectfully following the above decision of Hon’ble Apex Court in the case of Reliance Petro Product Pvt. Ltd., we uphold the order of learned CIT(A).”

3. We are of the view that the Commissioner of Income Tax (Appeals) as also the Tribunal have approached the issue correctly. The question whether the sale of the stock options would result in long term capital gains or short term gains was not very clear at the time when the respondent/ assessee filed his return for the assessment year 2002-03. In fact the view taken by the assessing officer in the quantum proceedings

had been reversed by the Commissioner of Income Tax (Appeals) in the appeal filed by the assessee. The view taken by the Commissioner of Income Tax (Appeals) was ultimately reversed by the Tribunal and the view of the assessing officer was upheld in the quantum proceedings. This, in itself, is indicative of the fact that the issue was not very clear-cut. That being the position, we cannot bring the case of the respondent/ assessee within the provisions of section 271(1)(c) of the said Act. The reliance placed by the Tribunal on *CIT vs. Reliance Petroproducts Pvt. Ltd.:* 322 ITR 158 (SC) is also apposite.

4. For the foregoing reasons we do not find any substantial question of law in this appeal. Consequently, the appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

FEBRUARY 08, 2013

hs