

Court No. - 3

Case :- INCOME TAX APPEAL No. - 249 of 2009

Appellant :- Amitabh Tayal

Respondent :- Commissioner Of Income Tax

Counsel for Appellant :- S.K.Garg,Ashish Bansal

Counsel for Respondent :- S.S.C.I.T.,Praveen Kumar

AND

Case :- INCOME TAX APPEAL No. - 66 of 2010

Appellant :- The Commissioner Of Income Tax Allahabad

Respondent :- Sh.Amitabh Tayal 6 Prayag Street Allahabad

Counsel for Appellant :- S.S.C.I.T.

Counsel for Respondent :- S.K.Garg,Ashish Bansal

Hon'ble Naheed Ara Moonis,J.

Hon'ble Saumitra Dayal Singh,J.

1. Heard Shri Ashish Bansal, learned counsel for the assessee and Shri Praveen Kumar, learned counsel for the revenue.

2. These income tax appeals are pending before this Court - one at the instance of the assessee and the other at the instance of the revenue.

3. Earlier, the Income Tax Appellate Tribunal (in short, 'the Tribunal') had, by order dated 16.03.2009, dismissed the assessee's appeal being I.T.A. No. 311/A/2008. Against that order, the assessee filed Income Tax Appeal No. 249 of 2009. At the same time, the assessee appears to have also filed a miscellaneous application being M.A. No. 14/A/2009 with respect to the final order of the Tribunal dated 16.03.2009 passed in I.T.A. No. 311/A/2008. That M.A. came to be allowed vide order dated 11 September 2009. Being aggrieved, the revenue has preferred I.T.A No. 66 of 2010, before this Court.

4. We have perused the record of the two appeals and we find that there is no stay order operating either in favour of the assessee or in favour of the revenue in either of the aforesaid two appeals, pending before this Court.

5. It is also an admitted fact that during the pendency of these two appeals, the assessee had applied for and was issued certificate (Form-3) dated 3 March 2021 under the Direct Tax Vivad Se Vishwas Act, 2020. A copy of that certificate has been annexed with the withdrawal application filed in I.T.A. No. 249 of 2009 by way of Annexure-2.

6. In view of the facts noted above, the certificate (Form-3) has

been issued on the assumption that the assessee's appeal being I.T.A. No. 311/A/2008 was pending before the Tribunal.

7. Having heard learned counsel for the parties and having perused the record, we find that appraisal made by the Principal Commissioner, Income Tax, Allahabad has rightly treated the assessee's I.T.A. No. 311/A/2008 to be pending before the Tribunal. It is so because on the date of issuance of the certificate, M.A. No. 14/A/2009 stood allowed vide order dated 11 September 2009 and there is no stay order operating against that order. What fate that order in I.T.A No. 66 of 2010 may have met, may only remain a question in the realm of uncertainty. As a fact, it cannot be denied that, as on date, the original order of the Tribunal dated 16.03.2009 stood set aside by the Tribunal and, therefore, the appeal was pending.

8. With the above observation and in view of the fact that the certificate has already been issued under the Direct Tax Vivad Se Vishwas Act, 2020, I.T.A. No. 249 of 2009 is **dismissed** as withdrawn while I.T.A. No. 66 of 2010 is **dismissed** as infructuous.

Order Date :- 4.8.2021

AHA