

(2006) 01 MP CK 0034

In the Madhya Pradesh High Court

Case No : IT Appeal No. 12 of 2003 27 January 2006

Ashok M. Patel

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Income Tax Act, 1961 — Section 143, 144, 148, 260A
Wealth Tax Act, 1957 — Section 17

Citation : (2006) 153 TAXMAN 518

Hon'ble Judges : Ashok Kumar Tiwari, J; A.M. Sapre, J

Bench : Full Bench

Advocate : S.C. Bagadia and D.K. Chhabra, for the Assessee and R.L. Jain and Ku. Veena Mandlik, for the Revenue, for the Appellant;

Judgement

A.M. Sapre, J.

The decision rendered in this appeal shall govern. disposal of other connected appeal being I.T.A. No. 13 of 2003, because both these appeals involve identical point and secondly, both the appeals are filed by the same assessee.

2. This is an appeal filed by assessee u/s 260A of the Income Tax Act against an order, dated 30-9-2002, passed by ITAT, Indore in I.T.A. No.625/Ind./91. The appeal was admitted for final hearing on following substantial question of law :__

"Whether a return was filed under the Amnesty Scheme, whether a regular order of assessment based on an earlier return could have been passed after subsequent filing of such Amnesty Scheme ?"

3. Without taking note of facts in detail, on what date the returns were filed and on what date the assessment orders were passed on those returns, the question that really arises for consideration in these two appeals which arise out of assessment years 1981-82 and 1984-85 filed by the assessee and the same was pressed in service by the learned counsel for the appellant is; whether order of assessment passed in regular assessment is legally sustainable in view of

assessment order passed on the return filed pursuant to Amnesty Scheme? In other words, the question that arises for consideration is; can there be two assessment orders in respect of one assessment year one in regular assessment and other in Amnesty Scheme?

4. In the opinion of Commissioner (Appeals), it is not possible and, hence, he upheld the contention of assessee by annulling the assessment order passed in regular assessment and, accordingly, asked the assessing officer to give effect to order passed in Amnesty Scheme. Whereas, the Tribunal by impugned order held in favour of revenue (CIT) by observing that in the facts of this case, what will prevail is the order passed in regular assessment proceedings and not the one passed in Amnesty Scheme. This is how, the Tribunal while negating the contention of assessee and by placing reliance on one Circular issued by CBDT, held in para 4 of impugned order :

"Para 4. We have considered the rival submissions carefully and find some force in the contention of Ld. DR. We reproduce answer to question Nos. 1 & 2 of Circular No. 451, dated 17-2-1986 :

"Question No. 1 - What will be the procedure required to be followed by the assessee who wants to declare income or wealth in respect of the past years ?

(a) in case where the assessments pertaining to those years are already . completed;

(b) in case where the assessments in respect of those years are pending.

Answer-In cases where the assessments are already completed, the taxpayer should approach the concerned Commissioner of Income Tax with the full disclosure of the amounts of income and/or wealth concealed in various years and should also file returns for the relevant years. He should also produce evidence of payment of taxes before 31-3-1986. The filing of the returns will be regularized by issue of formal notices u/s 148 of the Income Tax Act/section 17 of the Wealth Tax Act. In cases where the assessments are pending, the taxpayer should file revised return before the Income Tax Officer along with evidence of payment of taxes.

Question No. 2 - In respect of completed assessments, the question will arise whether the assessee should merely declare the income relevant to those years and pay the tax according to the rates prevalent in those years on such declared income or whether he is required to file the return of income showing the additional income.

Answer-As mentioned above, he must file a fresh return of income including the additional income."

From these clarifications, it is clear that during the pendency of Amnesty Scheme cognizance of such returns could have been taken only if factum of filing of such return was brought to the knowledge of CIT as no material has been produced

before us from which it can be said that fact of filing returns under Amnesty Scheme was brought to the notice of assessing officer or any other authority in the absence of such notice, department might have received these returns in a routine fashion. But assessee does not become entitled to the benefit of scheme. Our view is further strengthened because assessee never objected to the assessment framed by assessing officer u/s 144 on 28-11-1986 for the years. Thus, it becomes clear because instead of objecting to the assessments, assessee went into appeal against those assessment orders which means assessee also chose to ignore the returns filed by him under Amnesty Scheme. In these circumstances, we are unable to agree with learned Commissioner (Appeals) that latter assessment orders have to be cancelled. However, in view of the circumstances of the case and other facts, we set aside the order of Commissioner (Appeals) and direct assessing officer to give benefit of the income already assessed u/s 143(1) on the basis of returns filed under the Amnesty Scheme."

5. As observed supra, the question, therefore, that arises is; whether the view taken by the Tribunal which is quoted supra is correct and if so, whether this court can uphold it by holding the same to be inaccord with the Scheme of the Act ?

6. Heard Shri S.C. Bagadia, learned senior counsel with Shri D.K Chhabra, learned counsel for the appellant and Shri R.L. Jain, learned senior counsel with Ku. Veena Mandlik, learned counsel for respondent.

7. Having heard learned counsel for the parties and having perused record of the case, we are inclined to uphold the view and in consequence are inclined to dismiss the appeal.

8. In our opinion, as the facts found by the Tribunal shows that returns filed by assessee pursuant to Amnesty Scheme could not be regarded as valid returns inasmuch as the same were never brought to the notice of assessing officer. It cannot be disputed that those returns for the years in question were filed when the regular assessment for the years in question were pending. In this view of the matter, the Circular No. 451, dated 17-2-1986 relied on by the Tribunal would be applicable and cannot be ignored. It was rightly referred to by Tribunal.

9. Learned counsel for the appellant made attempt to urge on the basis of decisions in (1938) 6 ITR 414 (Privy Council) and RAMACHANDRAN AND CO. Vs. Income Tax OFFICER AND ANOTHER., that the view taken by Tribunal need to be reversed but in our opinion, the factual finding recorded by the Tribunal against the assessee referred supra makes the cases distinguishable having no application to the facts of this case.

10. Since, we are in agreement with the reasoning assigned by the Tribunal quoted supra; we find no merit in these appeals. Both appeals are accordingly dismissed. No costs.