

(1986) 06 MAD CK 0010

In the Madras High Court

Case No : Tax Case No"s. 398 and 399 of 1978 and Reference No"s. 218 and 219 of 1978

A.S.S.P. and Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-06-1986

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 256

Citation : (1986) 55 CTR 375 : (1988) 172 ITR 274

Hon'ble Judges : V. Ratnam, J;V. Ramaswami-II, J

Bench : Division Bench

Advocate : S.A. Balasubramanyan, for the Appellant; C.V. Rajan, for the Respondent

Judgement

V. Ramaswami, J.—In this reference u/s 256 of the Income Tax Act, 1961, the following two questions have been referred at the instance

of the assessee :

1. Whether, on the facts and in the circumstances of the case, the reassessments made on March 29, 1973, for the assessment years 1962-63

and 1963-64 were invalid ?

2. Whether the reassessments made on March 29, 1973, are beyond the period of limitation prescribed u/s 153(2) of the Income Tax Act and

hence invalid ?

2. The assessee is a registered firm carrying on business in purchase and sale of cloth. For the assessment year 1962-63 corresponding to the

previous year ended March 31, 1962, the assessee filed a return showing a total income of Rs. 890 from textile exports and an assessment was

made on the same day by the Income Tax Officer, Erode, accepting the return.

Similarly, for the assessment year 1963-64, the assessee filed a return on November 27, 1963, showing a total income of RS. 8,809 from textile exports and accepting the return, an assessment order was made by the same officer on November 27, 1963, itself. On November 30, 1965, the assessee filed revised returns showing an income of Rs. 10,200 for 1962-63 and Rs. 29,668 for 1963-64. On March 17, 1966, the Income Tax Officer, Erode, issued a notice u/s 148 of the Act seeking to reopen the assessments and the notices were served on the assessee on March 18, 1966. In pursuance of these notices, the assessee filed returns on May 20, 1966, showing an income of Rs. 4,667 for 1962-63 and Rs. 8,809 for 1963-64. It appears that no action was taken by the Income Tax Officer within the period of limitation prescribed even though the assessee had filed two returns on May 20, 1966, in response to the notices u/s 148 of the Act. While these matters were pending, the file of the assessee appeared to have been transferred to the jurisdiction of the Income Tax Officer, Hundi Circle-II, Madras, and that Income Tax Officer issued notices u/s 148 on October 15, 1968, for both the assessment years which were served on the assessee on October 25, 1968. The assessee, by letter dated March 20, 1973, stated that the returns of income for both the years filed on November 30, 1965, should be taken as the returns in response to the notices. The Income Tax Officer, City Circle, Madras, to whom the file was transferred made reassessment orders on March 29, 1973, determining the total income for the assessment year 1962-63 at Rs. 1,13,697 and for 1963-64 at Rs. 3,17,840. The assessee went in appeal before the Appellate Assistant commissioner contending that the second notice issued u/s 148 of the Act on October 15, 1968, was invalid as the earlier returns filed by him in pursuance of the notice dated March 17, 1966, issued by the Income Tax Officer, Erode, u/s 148 of the Act are still pending and had not been disposed of. The Appellate Assistant Commissioner accepted this contention and held that the order of the Income Tax Officer, City Circle, Madras, made on March 29, 1973, was without jurisdiction. On further appeal, however, the Tribunal was of the view that it is not possible to accept the contention of the assessee that because of the issue of notice u/s 148 of the Act by the Income Tax Officer, Erode, the original assessment proceedings could not be

said to have been set at large and that in view of the facts that the assessment order originally made by the Income Tax Officer would be valid till it

is revised, the second notice issued u/s 148 was valid. For this view, the Tribunal relied on the decision of the Punjab High Court in ATMA RAM

BINDRA BAN Vs. COMMISSIONER OF Income Tax, DELHI, AJMER, RAJASTHAN AND MADHYA BHARAT., . That was a case

arising under the Indian Income Tax Act, 1922, and it was held therein that a second notice issued under sub-section (1) of section 34, while the

proceedings which had commenced with the issue of the first notice were yet pending and had not been completed, is valid and the revised

assessment made in pursuance of the second notice was unassailable. There is not much discussion in this judgment. The learned judges have

referred to the well-settled position that in section 34 there is no limit the number of notices that may be issued so long as they are within the time-

limit specified in the section. However, the learned judges missed the point that every time a notice is issued u/s 148, there should be a final

assessment order or a reassessment order and the section in terms does not authorise the issue of a fresh notice though proceedings on a previous

notice are still pending and have not been finally disposed of. In fact, this decision is contrary to the view expressed by this court in S. Raman

Chettiar Vs. Commissioner of Income Tax, Madras, , wherein this court held that when a return is furnished by the assessee in consequence of a

notice issued u/s 34 of the Indian Income Tax Act, 1922, it was not open to the Income Tax Officer to ignore that return and issue a further notice

u/s 34(1)(a) on the assumption that there had been an omission or failure on the part of the assessee to make a return of his income. In fact, the

learned judges further held that even if the original notice issued u/s 34(1) of the Act was not a valid notice, the return filed in pursuance of such

notice itself could not be regarded as non est or illegal and even in such a case, the initiation of fresh proceedings u/s 34 with the issue of a fresh

notice was without jurisdiction. This judgment was affirmed by the Supreme Court in the decision in Commissioner of Income Tax, Madras Vs. S.

Raman Chettiar, . A similar view was taken by a Division Bench of the Allahabad High Court in COMMERCIAL ART PRESS Vs.

COMMISSIONER OF Income Tax, LUCKNOW., . It was held therein that when reassessment proceedings commence following the issue of a

notice u/s 148 and the same are pending, no fresh notice can be issued under the same provision. In view of the decisions of this court, the

Supreme Court and the Allahabad High Court with which we respectfully agree, we could not accept the interpretation placed by the Punjab High

Court in *ATMA RAM BINDRA BAN Vs. COMMISSIONER OF Income Tax, DELHI, AJMER, RAJASTHAN AND MADHYA*

BHARAT., . In fact, it is a settled legal principle that once reassessment proceedings are initiated by the issue of a notice u/s 148, the original

proceedings are set at large and the finality attached to the assessment order no longer exists and the whole assessment proceedings are open for

further consideration. It is true that it is not necessary to revise the order in pursuance of that notice ultimately and the proceedings may be

dropped. But that makes no difference to the legal principle that when the whole matter is set at large, the original assessment ceases to be final

and no reassessment is possible without a fresh order made in pursuance of the first notice issued u/s 148. There could also be no dispute that after

the reassessment order is made in pursuance of the first notice issued u/s 148, if the Income Tax Officer has any reason to believe that there is any

escapement of the income which will be covered u/s 147, he can initiate fresh proceedings with reference to the reassessment order already made

in pursuance of the notice u/s 148, and in that way he can make revised orders any number of times but that cannot affect the position that when a

return has been made in pursuance of the notice u/s 148, till that return is disposed of by any assessment order or reassessment order, no further

notice can be issued u/s 148. In the circumstances, we answer the first question in the affirmative and in favour of the assessee. In view of the

answer to the first question, the second question does not arise for our consideration. The assessee will be entitled to its costs. Counsel's fee Rs.

500(one set).