
(1994) 03 RAJ CK 0014

In the Rajasthan High Court

Case No : Income Tax Reference No. 59 of 1984

Bhagya Wanti Devi

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-03-1994

Acts Referred:

Income Tax Act, 1961 — Section 139(2), 139(4), 143, 144, 147

Citation : (1994) 210 ITR 687

Hon'ble Judges : V.K. Singhal, J;Arun Madan, J

Bench : Division Bench

Advocate : None, for the Appellant; G.S. Bapna, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated December 15, 1982, and February 24, 1983, in respect of the assessment year 1974-75 u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the limitation provisions contained in Section 153(2)(a) were applicable and not in Section 153(1)(c) of the Income Tax Act and, consequently, the assessment order passed by the Income Tax Officer was within time ?"

2. The brief facts of the case are that the assessee has not filed any return in respect of its income u/s 139(1) or Section 139(4) of the Income Tax Act 1961 (hereinafter called as "the Act"), and no notice was issued u/s 139(2) to the assessee. Subsequently, the Income Tax Officer issued a notice u/s 148 of the Act which was served on the assessee on January 5, 1977. In pursuance of the said notice, the return was required to be filed on or before February 7, 1977, but no return was filed till the last date. However, it was filed on February 14, 1977. The contention of the assessee was that the return should be deemed to have been filed u/s 139(4) of the Act and, therefore, the period of limitation as

prescribed u/s 153(1)(c) is applicable. The Appellate Assistant Commissioner found that there is no positive material on record to show that the Income Tax Officer had recorded his satisfaction and, in the absence of the express satisfaction of the Income Tax Officer, the initiation of proceedings u/s 147 were held to be without jurisdiction. The proceedings in the present case were initiated on the basis of wealth-tax assessment proceedings for the assessment year 1974-75 of the assessee.

3. The matter was challenged by the Revenue before the Tribunal. The provisions of sections 147 and 153 were taken into consideration. The provisions of Section 153(1) and (2) at the relevant time were as under:

"153, Time limit for completion of assessments and reassessments.--(1) No order of assessment shall be made u/s 143 or Section 144 at any time after the expiry of-

(a) two years from the end of the assessment year in which the income was first assessable, or

(b) one year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under Sub-section (4) or Sub-section (5) of Section 139, whichever is later.

(2) No order of assessment, reassessment or recomputation shall be made u/s 147 after the expiry of two years from the end of the financial year in which the notice u/s 148 was served:

Provided that where the notice u/s 148 was served on or before the 31st day of March, 1987, such assessment, reassessment or recomputation may be made at any time up to the 31st day of March, 1990."

4. Sub-section (2) of Section 153 has provided that no order of assessment, reassessment or recomputation shall be made u/s 147 after the expiry of two years from the end of the financial year in which the notice u/s 148 was served. This section refers to assessment, reassessment or recomputation. The provisions of Section 153(1) provide that no order of assessment shall be made u/s 143 or Section 144 at any time after the expiry of one year from the date of filing return or revised return under Sub-section (4) or Sub-section (5) of Section 139. On the basis of these two different provisions, the Tribunal came to the conclusion that even if the return filed by the assessee could be considered to be one filed u/s 139(4) still the provisions of Section 153(2) being specific provisions the general provisions of Section 153(1) are not applicable. The Tribunal has proceeded on the premise that the notice issued u/s 148 of the Act has to be deemed to be a notice u/s 139(2) of the Act and the assessment has to be made under the provisions of Section 143 and/or Section 144 of the Act. In the case of a regular assessment, the orders are issued u/s 153(1) of the Act and in the case of an assessment u/s 147, the orders are to be passed u/s

143(1) or Section 143(3) read with Section 147, as the case may be. In respect of the provisions of Section 147(a), it was noticed that specific provisions are on the statute book which provide the limitation for making assessment u/s 153(2) of the Act and, therefore, the provisions of Sub-section (1) being general in nature were held not applicable.

5. We have considered over the matter. The provisions of Section 153(2) are special provisions and are applicable only in respect of proceedings u/s 147 whereas Section 153(1) is applicable in respect of assessments u/s 143/144 and, therefore, they are provisions of general nature. The maxim generalia specialibus non-derogant has to be made applicable where special provisions exist, it will find its way in supersession of general provisions. In these circumstances, the provisions of Section 153(2)(a) were rightly found to be applicable and the assessment order was not barred by limitation. The view taken by the Tribunal is in accordance with law.

6. Consequently, we are of the opinion that the Tribunal was justified in holding that the limitation provisions contained in Section 153(2)(a) were applicable and not in Section 153(1)(c) of the Income Tax Act, and, consequently, the assessment order passed by the Income Tax Officer was within time. The reference is answered in favour of the Revenue and against the assessee. No order as to costs.