(1985) 01 RAJ CK 0058

In the Rajasthan High Court

Case No : Income-tax Reference No. 136 of 1984

Bhagyawanti Devi APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 07-01-1985

Acts Referred:

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

Citation : (1987) 167 ITR 875 : (1985) 21 TAXMAN 420

Hon'ble Judges : N.M. Kasliwal, J;D.L. Mehta, J

Bench : Division Bench

Advocate : J.C. Jain and S.N. Goyal, for the Appellant; R.N. Surolia, for the Respondent

Judgement

Kasliwal, J.—This petition has been filed by the assessee u/s 256(2) of the Income Tax Act, 1961, praying that the Income Tax Tribunal be directed to make a statement of the case and refer the following question of law in addition to one question already referred by him :

" Whether, on the facts and in the circumstances of the case, the learned Income Tax Officer was competent to issue notice u/s 147(a) before the expiry of the period prescribed u/s 139(4)(b)(iii) of the Income Tax Act, 1961, and whether the hon''ble Tribunal was justified in holding that the notice issued by the Income Tax Officer was u/s 147(a) and not u/s 147(b) of the Income Tax Act, 1961, and so the assessment was not time-barred ?"

2. It may be stated at this stage that the Tribunal has referred the following question to this court for its opinion :

" Whether, the hon''ble Tribunal was justified in holding that the case was governed by the provisions of Section 153(2)(a) although the return was filed u/s 139(4) of the Income Tax Act, and as such the assessment was not time-barred, and that Section 153(1)(c) had no application in this case ? "

3. The Tribunal, by order dated December 15, 1982, held that it was common

ground between the parties that no return of income was filed by the assessee prior to the issue of the notice u/s 148 of the Act by the Income Tax Officer. There was thus omission and failure on the part of the assessee to make a return of his total income on account of which income chargeable to tax had escaped assessment for that year. That being so, the Income Tax Officer was within his rights to invoke his jurisdiction under the first situation covered by Section 147(a). Learned Tribunal considered the provisions of Clause (b) of Section 147. It was held by the Tribunal that Clause (b) of Section 147 provides that notwithstanding that there has been no omission or failure as mentioned in Clause (a) of Section 147 on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Under this provision, the Income Tax Officer has power to invoke jurisdiction notwithstanding the fact that there was no omission or failure on the part of the assessee in making a return of his total income. The Tribunal further observed that in other words, even if the assessee had filed the return of his income, if the Income Tax Officer in consequence of information in his possession had reason to believe that income chargeable to tax had escaped assessment, he is empowered to invoke the jurisdiction under Clause (b). From the language of Clause (b), it is apparent that the jurisdiction u/s 147(b) can be invoked by the Income Tax Officer only for the purpose of reassessment and not for first assessment. We have seen the order of the Tribunal and as a fact it has been observed by the Tribunal that it was common ground between the parties that no assessment had been made by the Income Tax Officer earlier as the assessee had not even filed the return of total income nor had the Income Tax Officer issued any notice u/s 139(2) or even u/s 148 earlier. We are thus clearly of the opinion that the case of the assessee in the facts and circumstances of this case cannot fall u/s 147(b) of the Income Tax Act and it falls in the first situation mentioned in Section 147(a) of the Act.

4. Learned counsel for the assessee vehemently submitted that in order to bring the case within the purview of Section 147(a), it was necessary for the Income Tax Officer to hold that he had reason to believe that by reason of the omission or failure on the part of the assessee to make a return u/s 139 for any assessment year to the Income Tax Officer, income chargeable to tax had escaped assessment for that year. In our view, no return at all has been filed by the assessee and a notice was given by the Income Tax Officer u/s 148 of the Act and thereafter return was filed, and as such it was not a case of reassessment. The provisions of Section 147(a) alone can thus be attracted and not Section 147(b). In view of these circumstances, we do not find any error in the order of the learned Tribunal in not referring the question for the opinion of this court. The reference application having no force is dismissed.

