

(2010) 07 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : ITA No. 71 of 2003 (A.Y. 1992-93)

CIT

APPELLANT

Vs

Devki Devi

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Income Tax Act, 1961 — Section 142A, 143(1)(a), 143(3), 147, 148

Citation : (2012) 344 ITR 721

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Savita Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—The Revenue has approached this court u/s 260A of the income tax Act, 1961 (in short "the Act"), and has prayed that the following substantial questions of law arise in this appeal for consideration of this court from the order of the income tax Appellate Tribunal, Amritsar Bench, Amritsar (in short "the Tribunal") passed on September 30, 2002, in income tax Appeal No. 555 (ASR) 2001, for the assessment year 1992-93 :

1. Whether, on the facts, and in the circumstances of the case, the hon''ble income tax Appellate Tribunal was justified in law in holding that the reopening of assessment u/s 147 of the Act based on the valuation report was not valid, whereas as per the valuation report income to the tune of Rs. 16,91/200 has escaped assessment?

2. Whether, on the facts and in the circumstances of the case, the hon''ble income tax Appellate Tribunal was justified in holding that the report of the Departmental Valuation Officer is information or not for initiating proceedings u/s 147 even after the amendment in section 147 with effect from April 1, 1989?

The assessee had filed a return of income for the assessment year 1992-93, declaring an income of Rs. 18,650. The return was processed u/s 143(1)(a) of

the Act and subsequently proceedings under sections 147/148 of the Act were initiated. The Assessing Officer observed that an income of Rs. 16,91,200 chargeable to tax had escaped assessment as the assessee had incurred Rs. 1,51,000 as cost of construction/renovation of residential house No. 3056, Power House Road, Bathinda, against the cost of construction of Rs. 18,42,200 as determined by the Departmental Valuation Officer (DVO). The Assessing Officer ultimately, vide assessment order dated February 18, 2000, framed assessment on an income of Rs. 14,09,928. The assessee filed an appeal before the Commissioner of income tax (Appeals) (for short "the CIT (A)"). The appeal was remanded back to the Assessing Officer for decision afresh. The Assessing Officer re-framed the assessment, vide order dated June 27, 2001, and made an addition of Rs. 5,06,600. This gave rise to the assessee to once again prefer an appeal before the Commissioner of income tax (Appeals). In the appeal, the Commissioner of income tax (Appeals) held that the Assessing Officer was justified in invoking the provisions of section 147 read with section 148 of the Act. The consequential assessment framed u/s 143(3) was thus held to be legal and valid.

2. The assessee preferred an appeal before the Tribunal. The assessee only pressed the question of reopening of the assessment u/s 147 of the Act. The Tribunal, after examining the matter, accepted the plea of the assessee and, accordingly, allowed the appeal, vide order dated September 30, 2002.

3. The issue that arises in this appeal is whether the Assessing Officer could have reopened an assessment on the basis of the report of the DVO. Learned counsel for the Revenue, however, could not refer to any provision except section 55A of the Act on the basis of which, it could be pleaded that the report of the DVO was valid for estimating the correct cost of the construction and investment in the house in question. He also made efforts to draw support from the provisions of section 142A of the Act introduced by the Finance (No. 2) Act of 2004, with effect from November 15, 1972.

4. We do not find any substance in either of the submissions made by the learned counsel for the Revenue.

5. The Apex Court in *Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong*, had held that in an assessment of the assessee to income tax, the reference by the Assessing Officer to the DVO regarding the question of cost of construction of a property built by the assessee cannot be made. Once that is so, the reliance on the report of the DVO by the Assessing Officer for reopening the assessment was not justified.

6. Even after insertion of section 142A of the Act by the Finance (No. 2) Act, 2004, with effect from November 15, 1972, this court, while considering the scope of its applicability to proceedings under the Act, in income tax Reference No. 48 of 1994, *CIT v. Nabha Solvex (P) Ltd.* decided on July 7, 2010, (since reported in *Commissioner of Income Tax Vs. Nabha Solvex (P) Ltd.*, has held as

under (page 182 of 343 ITR) :

The question regarding the applicability of section 142A of the Act was the subject-matter of consideration before this court in Commissioner of Income Tax Vs. Krishan Lal Dua, wherein the assessment had become final on March 31, 1995, and the same was not liable to reassessment u/s 153A of the Act, it was held that section 142A of the Act would not be applicable as the proviso was attracted. The Allahabad High Court in Smt. Shashi Agarwals case (supra) had held that where the Tribunal had passed the order before the cut-off date prescribed under the proviso to section 142A of the Act and the appeal u/s 260A of the Act being maintainable before the High Court only on substantial question of law, therefore, it could not be said to be continuation of the assessment proceedings within the meaning of the proviso to section 142A of the Act. The Assessing Officer, thus, had no power to refer the matter to the DVO. Similar view has been taken by Delhi and Calcutta High Courts.

7. In view of the above, we hold that section 142A of the Act is not attracted to the facts of the present case and, thus, no reliance can be placed upon that. Consequently, the initiation of reassessment proceedings on the basis of report of the DVO cannot legally be sustained. Accordingly, the substantial questions of law claimed by the Revenue for determination by this court are answered against the Revenue. The appeal is dismissed.