(2013) 07 RAJ CK 0004

In the Rajasthan High Court

Case No : ITA No. 46 of 2005

CIT — APPELLANT

Vs

Rajasthan Vanaspati Products (P.) Ltd. — RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 07 RAJ CK 0004

Hon'ble Judges : N.K. Jain, J;Arun Kumar Mishra, J

Bench : Division Bench

Judgement

1. By The Court'' This appeal u/s 260A of the Income Tax Act, 1961 (the Act) has been filed by the Department aggrieved against the order dated 10.05.2004 passed by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur (the Tribunal), whereby, the appeal filed by the assessee was allowed and it was held that the assessment framed by the assessing officer (assessing officer) on 31.03.1989 was barred by limitation.

2. This Court while admitting the appeal on 24.05.2005 framed the following substantial question of law:--

(i) Whether in the facts and circumstances, the Tribunal was justified in holding the assessment framed on 31st March, 1989 for the assessment year 1985-86 was barred by Limitation u/s 153(1)(a) and it was not a case governed by Section 153(1)(b)?

3. The facts in brief may be noticed that a search was conducted u/s 132 of the Act on 24.08.1984; the accounting year of the assessee closed on 31.10.1984 and the due date for filing return was 30.06.1985; the assessee sought extension of time for filing the return vide application dated 24.06.1985, which was granted till 30.09.1985; the assessee filed its return of income declaring loss of Rs. 6,28,696/- on 31.10.1985; the first assessment was framed on 31.03.1989 on an income of Rs. 5,50,82,560/-; the assessee challenged the validity of the assessment before the Commissioner of Income Tax (Appeals),

Udaipur (Commissioner (Appeals)), which was decided vide order dated 09.01.1990, though and the ground for challenging the validity was rejected, however, the assessment was set aside; the assessing officer framed second assessment vide order dated 10.03.1992 on an income of Rs. 5,38,14,438/-, which was again set aside by the Commissioner (Appeals) vide order dated 28.10.1992; consequently, third assessment was framed by assessing officer on 27.03.1995 at an income of Rs. 20,62,263/-, which was again challenged by the assessee before the Commissioner (Appeals), who decided the same vide order dated 21.08.1995. The assessee approached the Tribunal against the orders of the Commissioner (Appeals) i.e. 09.01.1990 and 21.08.1995.

4. Before the Commissioner (Appeals), a preliminary objection was raised by the assessee that the assessment in question has become barred by limitation and the same was beyond the time available under the provisions of Section 153(1)(a) of the Act; it was, inter alia, submitted that the so called notice dated 17.03.1988 for initiating the penalty proceedings u/s 271(1)(c) of the Act was in fact served on one Mr. S.K. Khandelwal on 10.03.1989 and not on 17.03.1988 as the said Mr. Khandelwal was not at Jodhpur on that day and, as such, the service of the letter on him on 17.03.1988 was factually incorrect, however, the Commissioner (Appeals) came to the conclusion that as the acknowledgment bears the date of 17.03.1988 and there was no material on record to show that the notice in connection with the initiation of concealment etc. proceedings was not served on 17.03.1988, the plea regarding the assessment being barred by limitation was negated in view of the provisions of Section 153(1)(b) of the Act.

5. Before the Tribunal, the issue was thoroughly re-agitated by both the parties and the affidavits of Mr. S.K. Khandelwal, Mr. Raj Kumar Garg, Sales Tax Consultant, Mr. U.C. Jain, Counsel from the assessees side and affidavit of Mr. Ashwini Kumar, assessing officer from the Departments side were filed; several documents, note-sheets etc. were also filed as part of the paper book and the issue of service of notice u/s 271(1)(c) of the Act dated 17.03.1988 on the same day on Mr. S.K. Khandelwal was contested.

6. The Tribunal after thoroughly considering and scrutinizing the material available on record, affidavits filed by both the parties, after referring to Smt. Savitri Rani Malik (Legal representative of late S.P. Malik) Vs. Commissioner of Income Tax, came to the conclusion thus:--

25. In the present case, the assessing officer while issuing the alleged notice dated 21.3.88 was not in a position to know how much income had been concealed by the assessee or as to whether there was any concealment of income or furnishing of inaccurate particulars of income. In the instant case, the notice was handed over to Shri U.C. Jain, the then counsel for the assessee on 13.3.89 and the time available for completion of the assessment was upto 31.3.88. Therefore, in view of the ratio laid down by the Hon''ble Guwahati High Court in the aforesaid case, the assessment order for A.Y. 1985-86 passed on 31.3.89 was barred by limitation.

The Tribunal thereafter dealing with the issue of limitation from another angle held thus:--

27. In the instant case also, at the time of issuing the notice u/s 271(1)(c) of the Income Tax Act dated 21.03.88 there was no order made u/s 143(3) which, in fact, was passed on 31.3.89. Therefore, the show cause notice dated 17.3.88 issued by the assessing officer on the same date (if at all) could not be treated as assessment u/s 143 R/w. u/s 271(1)(c) of the Income Tax Act for which the period of limitation would be 8 years because the assessing officer did not make assessment under those sections and also had not recorded a finding as required u/s 271(1)(c) of the Income Tax Act that the assessee had concealed particulars of his income or had deliberately furnished inaccurate particulars thereof. In view of the above, it can safely be held that the assessing officer was not sure upto 31.3.88 as to whether the assessee had concealed his income or furnished inaccurate particulars of his income because nothing had been mentioned in the alleged show cause notice dated 17.3.188, but only clarification/explanation has been sought. Therefore, the assessing officer was not in a position to get the benefit of 8 years for completing the assessment by invoking the provisions of section 153(1)(b) of the Income Tax Act.

The Tribunal further went on to hold that:--

... it was the duty of the assessing officer to record his satisfaction that the assessee had concealed the income or furnished inaccurate particulars of income. However, the assessing officer neither stated that how much income was concealed by the assessee nor that what particulars of income had not been furnished by the assessee. Therefore, the notice dated 21-3-1988 issued u/s 271(1)(c) of the Income Tax Act was not a valid notice since there was no satisfaction as regards to the concealment of income or furnishing of inaccurate particulars of income and consequently levying penalty u/s 271(1)(c) of the Income Tax Act. Therefore, the provisions of Sec. 153(1) (b) were not applicable to the facts of the present case.

Though the notice relied upon by the Department is dated 17-3-1988 but as by the said notice the assessee was called upon to reply by 21.03.88, it appears the Tribunal has taken the date of notice as 21-3-1988.

7. Consequently, as noticed above, the Tribunal came to the conclusion that the assessment framed by the assessing officer on 31-3-1989 was barred by limitation and in view of its finding on the issue of limitation did not give any finding on the remaining grounds raised by the assessee on merits and, consequently, both the appeals were allowed.

8. It was submitted by learned counsel for the Revenue that the learned Tribunal has not examined the matter in its entirety, with objectivity and in correct perspective and seriously erred in holding the assessment as barred by limitation and from the material available on record, it cannot be said that notice u/s 271(1)(c) of the Act was not issued on 17-3-1988 and, consequently, limitation u/s

153(1)(b) of the Act would be applicable and the assessment was well within limitation.

9. On the other hand, learned counsel for the respondent assessee submitted that the finding recorded by the learned Tribunal is essentially a finding of fact and no question of law arises for consideration of this Court and, therefore, the appeal deserves to be dismissed on this count alone.

10. We have considered the rival submissions made at the Bar.

Provisions of section 153(1) before the amendment made by the Finance Act, 1989 w.e.f. 1-4-1989 reads as under:--

No order of assessment shall be made u/s 143 or section 144 at any time after--

(a) expiry of

(i) four years from the end of the A.Y. in which the income was first assessable, where such A.Y. is an A.Y. commencing on or before the 1-4-1967;

(ii) three years from the end of the A.Y. in which the income was first assessable, where such A.Y. is the A.Y. commencing on the 1st day of April, 1968;

(iii) two years from the end of assessment year in which the income was first assessable; where such A.Y. is an A.Y. commencing on or after the 1-4-1969; or

(b) the expiry of eight year from the end of the A.Y. in which the income was first assessable, in case falling within clause (c) of sub-section (1) of section 271.

11. From the above provisions, it would be clear that the assessment can be completed within two years from the end of Assessment Year (A.Y.), in which, the income was first assessable where such A.Y. is an A.Y. commencing on or after 1-4-1969 and the time for completing the assessment was eight years from the end of A.Y. in case falling within Clause (c) of Sub-section (1) of section 271 of the Act.

12. In the present case, the A.Y. was 1985-86, therefore, the assessment could have been completed before 31-3-1988 if the provisions of section 153(1)(a) of the Act were applicable and the same could be completed within the extended period if the provisions of section 153(1)(b) of the Act were applicable. The assessing officer taking benefit of the issuance of notice dated 17-3-1988 u/s 271(1)(c) of the Act framed the assessment on 31-3-1989, which was upheld by the Commissioner (Appeals), however, on the learned Tribunal coming to the conclusion that notice u/s 271(1)(c) of the Act was not served on the assessee on 17-3-1988 as claimed by the department found the assessment to be barred by limitation u/s 153(1)(a) of the Act.

13. Having gone through the detailed and exhaustive discussion undertaking by the learned Tribunal on the issue relating to the service of notice on the assessee on 17-3-1988 as claimed by the department and in view of the reasons recorded by it for reaching the conclusion that the notice u/s 271(1)(c) of the Act was

handed over to the counsel on 13-3-1989, and by then, the time available for completion of assessment was already over on 31-3-1988 and that the department was not entitled for extended period of limitation u/s 153(1)(b) of the Act, we find no reason to interfere with the said finding.

14. The learned counsel for the appellant has failed to point out any perversity either in the findings recorded by the learned Tribunal or from the original record, which was summoned by this Court, requiring interference from this Court.

15. In that view of the matter, the order passed by the Tribunal does not call for any interference and the question framed by this Court is therefore, answered against the Revenue and in favour of the assessee.

16. Consequently, there is no substance in the appeal and the same is, therefore, dismissed. No costs.

