(2012) 04 AHC CK 0036

In the Allahabad High Court

Case No : IT Appeal No. 330 of 2008

CIT APPELLANT

Vs

Smt. Anjana Sabharwal RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Income Tax Act, 1961 — Section 139(5), 142, 143(1), 143(3), 147

Citation : (2012) 04 AHC CK 0036

Hon'ble Judges : Prakash Krishna, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : A.N. Mahajan and Dhananjay Awasthi, for the Appellant; S.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Dhananjay Awasthi, learned counsel for the appellant and Sri S.D. Singh appearing for the respondent. The present appeal has been filed u/s 260A of the IT Act, 1961 (hereinafter referred to as the Act) and is directed against the judgment and order dated 27-7-2007 passed by the Tribunal in ITA No. 305/ Luck/2007 for assessment year 2001-02 whereby the Tribunal has held that notice u/s 148 of the Act being issued after filing of revised return u/s 139(5) of the Act is not valid.

2. The background facts may be noted in brief. The dispute relates to assessment year 2001-02. The assessee, respondent herein, filed original return on 31-7-2001. The said return was processed u/s 143(1) of the Act on 24-3-2004. It appears that subsequently, the assessee discovered some omission and wrong statement and she filed a revised return on 28-5-2002 surrendering Rs. 1,00,000 as income which was earlier shown as two gifts of Rs. 50,000 each. The return was finalised u/s 143(1) of the Act by the order dated 24-3-2004. It appears that thereafter a notice u/s 148 of the Act was issued on the ground that the gift claimed in the original return had escaped assessment. The AO passed reassessment order on 28-2-2005 on the footing that in the original return, the

assessee had claimed two gifts each of Rs. 50,000, which she failed to prove. The case of the assessee that she had surrendered Rs. 1,00,000 in the revised return was not accepted, as the filing of the return was not a bona fide act of the assessee. The matter was carried unsuccessfully before the CIT(A)-I, Kanpur. The matter was further carried in appeal by the assessee before the Tribunal. The Tribunal by the order under appeal has allowed it and has held that in view of the fact that assessee has filed a revised return even before initiation of any proceeding against her, there was no material with the Department to form an opinion that income of the assessee has escaped assessment. Challenging the aforesaid judgment and order of the Tribunal, present appeal has been filed.

3. In the memo of appeal, following questions of law have been framed:

1. Whether on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in law in quashing the order u/s 147/143(3) of the IT Act, 1961 without appreciating that the so-called revised return filed on 28-5-2002 was not a valid return within the meaning of provisions of section 139(5) of the Act ?

2. Whether on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in law in quashing the reassessment proceedings without appreciating the ratio of decision given by the Hon''ble Supreme Court in the case of G.C. Agarwal Vs. Commissioner of Income Tax, Assam, Nagaland and Another,

4. The learned counsel for the Department submits that filing of revised return by the assessee was wholly mala fide action. She filed the revised return just to get out of the clutches of the inquiry proceedings put to motion by Investigating Wing of the Department in respect of large-scale gifts claimed by various assessees. Elaborating the argument, it is submitted that surrendering Rs. 1,00,000 (the gift amount) as income in the revised return by the assessee was not a bona fide act and therefore she could not file revised return u/s 139(5) of the Act.

5. In reply, the learned counsel for the assessee submits that as soon as the assessee discovered the omission and wrong statement in the original return, she filed a revised return and the revised return was a valid return. It was accepted by the Department as it was processed and tax was assessed on the basis of the income disclosed in the revised return. The tax was also deposited in pursuance thereof.

6. We have considered the respective submissions of learned counsel for the parties and perused the record.

7. The crux of the matter is whether on the facts and circumstances of the case, is it a case of escapement of income. The reassessment notice was issued on the basis of original return of income, wherein it was stated that the assessee had received amount of Rs. 1,00,000 in the shape of gifts.

8. A bare look to section 139(5) of the Act would show that it enables a person, who has already filed a return under sub-section (1), or in pursuance of notice under sub-s. (1) of section 142, to file a revised return at any time before the expiry of one year if he discovers any omission or any wrong statement therein. The ground for filing the revised return is discovery of any omission or discovery of any wrong statement in the return already filed. It is not the case of the Department that the revised return was not filed within the time stipulated therein. Thus if an assessee discovers any omission or wrong statement in the original return after filing the same, section 139(5) enables him to file revised return.

When the Act permits the filing of a revised return, it is expected to be considered by the assessing authority, if the same is filed before the assessment order is made by it, otherwise, the very purpose of giving such a right would be frustrated.

9. In Dhampur Sugar Mills Ltd. Vs. Commissioner of Income Tax, , this Court has laid down that a right has been given to every assessee to file a correct and complete return if he discovers an error or omission in the return filed earlier. The earlier return, after a revised return is filed, cannot form the basis of assessment although it used to indicate the conduct of the assessee. Once a revised return is filed, the original return must be taken to have been withdrawn and to have been substituted by a fresh return for the purpose of assessment.

10. Coming to the facts of the present case, it is apt to note that the revised return was filed on 28-5-2002 and was processed u/s 143(1) on 24-3-2004. At the cost of repetition Rs. 1,00,000--the gift amount was surrendered to be taxed and was taxed. Tax amount was also deposited. By applying the ratio of Dhompur Sugar Mills (supra), the revised return filed on 28-5-2002 was the only return which substituted the original return. This being the position, clearly, it was not a case of escapement of income of Rs. 1,00,000 and as such the very initiation of reassessment taking recourse of section 148 of the Act was not warranted.

11. The revised return was accepted by the Department u/s 143(1) by the order dated 24-5-2004 and it is too late to say that the revised return was not valid. It could not be rejected, for the first time by the CIT(A), while hearing an appeal, which arose out of reassessment proceeding, the proceeding which was not validly initiated.

12. The AO and the "first appellate authority have committed illegality in holding that revised return can be filed only when there is bona fide mistake. Section 139(5) of the Act enables an assessee to file revised return on the discovery of any omission or wrong statement which was done in the present case by the assessee. It may be placed on the record that revised return was filed on 28-8-2002 and the proceedings for reassessment were initiated on 24-5-2004 i.e. much after filing of the revised return. The revised return having been filed

and order u/s 143(1) of the Act having been passed, it cannot be said that income of the assessee has escaped assessment and, therefore, the initiation of reassessment proceedings was not justified. In other words, the view taken by the Tribunal is perfectly justified in law. We do not find any merit in the appeal.

The appeal is dismissed.