
(2014) 04 KL CK 0005
In the High Court Of Kerala
Case No : ITA No. 52 of 2012

CIT

APPELLANT

Vs

V.R. Sreekumar

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Income Tax Act, 1961 — Section 139 142(1) 143(1) 143(2) 148

Citation : (2014) 04 KL CK 0005

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : P.K.R. Menon and Jose Joseph, Advocate for the Appellant; P. Balakrishnan and Mohan Pulikkal, Advocate for the Respondent;

Judgement

Antony Dominic, J.

1. This appeal is filed challenging the order passed by the Tribunal, Cochin Bench, in ITA No. 70/Coch/2009.

2. In relation to the assessment year 2000-01, the respondent filed his return on 31-10-2000. When the return was processed under section 143(1) of the IT Act (the Act for short) escapement of income was noticed. Thereupon, the assessing officer issued notice under section 148 on 7-4-2006. The said notice was issued to the assessee without obtaining approval of the Jt. CIT. In response to the notice, the assessee filed the same return, which he filed on 31-10-2000, showing the income as originally returned. This was on 22-5-2006. Thereafter, on 14-7-2006, notice under section 143(2) of the Act was issued to the assessee. Thereupon, the proceedings issued dropped on account of the absence of approval of the Jt. CIT.

3. Thereafter, approval of the Jt. CIT was obtained and on 4-12-2006, notice under section 148 of the Act was issued requiring the assessee to file his return within thirty days of service of notice. Though, the notice was served on the assessee on 7-12-2006, he did not file any return. Thereafter, on 5-10-2007,

notice was issued to the assessee under section 142(1) of the Act. After receipt of notice, on 15-10-2007, the assessee submitted a copy of the return which he submitted on 31-10-2000 along with certain statements. The assessee was heard on various dates and on 14-12-2007, pre-assessment notice was issued. Objections raised by the assessee were considered and on 28-12-2007, by Annex. A, assessment was completed.

4. The assessee filed appeal before the Commissioner (Appeals), contending inter alia that when notice under section 148 was issued on 4-12-2006, a notice under section 143(2) was mandatory and that since such a notice was not issued, the assessment order was illegal. Though, this contention was rejected by the appellate authority, the appeal was allowed in part on other grounds.

5. The assessee challenged the order of the Commissioner (Appeals) before the Tribunal. The Tribunal considered the matter and the JM accepted the contention of the assessee that in the absence of a notice under section 143(2) of the Act, the assessment was illegal. The AM took a contrary view. The matter was referred to a Third Member, who concurred with the view taken by the JM. Accordingly, the appeal filed by the assessee was allowed and the assessment order was set aside. It is in this background, the Revenue has filed this appeal.

6. We heard the learned standing counsel for the Revenue and the learned counsel appearing for the respondent.

7. The first contention raised by the learned counsel for the appellant was that notice under section 143(2) is to be issued only in a case where a return is filed. According to the learned counsel, in response to the notice under section 148, the assessee did not file any return within thirty days of service of notice and instead, he filed a copy of the return that he had filed as early as on 31-10-2000, along with the statements. It is stated that when a notice is issued under section 148, the assessee has the option of filing a fresh return or giving a statement opting for the earlier return. The learned counsel contended that, in this case the assessee did not do either of the two and that therefore, there was no question of issuing notice under section 143(2) of the Act.

8. The fact that the assessee has an option either to file return or to standby the earlier return filed is not disputed by the Revenue. Insofar as this case is concerned, facts noticed by us show that after the notice under section 148 was served on 7-12-2006, the assessee submitted a copy of the return along with statements only on 15-10-2007. Accepting this as the return filed by the assessee, the assessing officer completed the assessment also. This, therefore, means that the assessee submitted the return which he had already submitted on 31-10-2000 with the intention of opting for having the assessment completed based on the return that he had already filed. Further, that return was accepted and acted upon by the Department. In such a case, the Department cannot now be allowed to contend that the assessee did not file a return in response to section 148 and therefore, there was no necessity to issue a notice under section

143(2) of the Act. Therefore, this contention urged by the appellant cannot be accepted.

9. The second contention raised was that even if it is assumed that a return submitted on 30-10-2000 was filed by the assessee on 15-10-2007, such filing of the return was not within the time specified in the notice under section 148. Therefore, according to the appellant, there was no return validly filed obliging them to issue notice under section 143(2). This argument of the learned counsel for the Revenue was resisted by the learned counsel for the respondent, contending that by the notice issued under section 142(1) issued on 5-10-2007, assessee was called upon to file a return and it was in compliance of that requirement, the return in question was filed. Therefore, the counsel contended that the return was a validly filed one entitling the assessee for a notice under section 143(2).

10. The notice under section 148 was issued to the assessee on 4-12-2006. By this notice, the assessee was called upon to file the return within 30 days of service of the notice. This notice was served on the assessee on 7-12-2006. The assessee did not request for extension of time, nor was any extension granted for complying with the notice. The assessee did not file any return within the 30 days specified in the notice also and instead, filed the return submitted on 30-10-2000, only on 15-10-2007. Such a return belatedly filed by the assessee, is an invalid one in view of the provisions contained in section 139 of the Act.

11. Insofar as the notice under section 142(1) relied on by the counsel for the assessee is concerned, reading of the provisions of section 142(1) itself shows that this provision deals with cases where a return has been filed and despite notice, a return has not been filed. In the case of those who have not filed a return, clause (i) provides for filing of return. On the other hand, in the case of those who have already filed a return under section 139, clause (ii) enables the assessing officer to issue notice under this section to produce or caused to be produced such accounts or documents as the assessing officer may require. Insofar as this case is concerned, the assessee had already filed a return under section 139 as early as on 31-10-2000 and therefore calling upon the assessee to file a return under section 142(1) does not arise. This, therefore, means that notice under section 142(1) issued to the assessee on 5-10-2007 could have been only to call upon the assessee to produce accounts or documents and not for filing a return. Further, in a proceeding initiated under section 148, the provision does not come into operation whatsoever.

12. This, therefore, means that the return, if any, filed by the assessee on 15-10-2007 was not a valid return, which could have been acted upon by the assessing officer entitling the assessee for a notice under section 143(2) of the Income Tax Act. Therefore, the conclusion of the assessing officer and the Commissioner (Appeals) is perfectly legal and the view taken by the Tribunal that in the absence of a notice under section 143(2) the assessment is illegal cannot be sustained. The order of the Tribunal, Cochin Bench, in ITA No. 70/Coch/2009

will stand set aside.

13. Since the appeal was decided entirely on the legal question discussed above, we remit the matter back to the Tribunal to consider the other contentions that are raised by the assessee.

The appeal is allowed as above.