

(1984) 03 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 90 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Aggarwal Textile Mills

RESPONDENT

Date of Decision : 20-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1985) 154 ITR 234

Hon'ble Judges : S.S. Kang, J; M.R. Sharma, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; B.S. Gupta and S.K. Mittal, for the Respondent

Judgement

Sharma, J.—For the assessment year 1971-72, the assessee was held liable to pay tax on a total income of Rs. 77,090. Later on, the ITO reopened the assessment u/s 147(b) of the I.T. Act, 1961 (hereinafter called "the Act"), on the basis of a note received by him from the Internal Audit Party of the Income Tax Department to the effect that "customs drawbacks" amounting to Rs. 71,386 had escaped assessment to tax. He, accordingly, served a notice u/s 148 of the Act on the assessee on April 24, 1974. In response to the notice, the assessee repeated the earlier return, which he had filed. The assessee also objected to the validity of the proceedings u/s 147(b) of the Act. The ITO overruled the assessee's objections and included a sum of Rs. 71,386 in the total income of the assessee and refrained the assessment on a total income of Rs. 1,46,302. The assessee went up in appeal before the AAC of Income Tax. That Officer came to the conclusion that the assessee had disclosed the entire information to the ITO and reassessment on the basis of an audit note amounted to a mere change of opinion which was not permissible u/s 147(b) of the Act. He, therefore, annulled the assessment made by the ITO. The Revenue went up in appeal against this order passed by the AAC, which was dismissed by the Appellate Tribunal, Amritsar Bench.

2. At the instance of the Revenue, the following question of law has been referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in maintaining the order of the Appellate Assistant Commissioner holding that proceedings were not validly initiated by the Income Tax Officer u/s 147(b) of the Income Tax Act, 1961, for the assessment year 1971-72 ?"

3. The answer to this question stands concluded against the Revenue and in favour of the assessee on the basis of a Supreme Court judgment in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, and a Division Bench judgment of this court, *Commissioner of Wealth-tax Vs. Smt. Savitri Devi and Another (L/R of Nemi Chand Jain)*, . We, therefore, answer the question accordingly and make no order as to costs.