(2009) 01 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

Ajmer Singh — RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:
Income Tax Act, 1961 — Section 143, 148

Citation : (2009) 310 ITR 211

Hon'ble Judges : Nawab Singh, J;J.S. Khehar, J

Bench : Division Bench

Judgement

J.S. Khehar, J.—The instant appeal emerges from the return of income filed by the respondent-assessee in respect of the assessment year 1994-95 on March 12, 2003. During the course of deliberations at the hands of the Assessing Officer, the Assessing Officer issued a notice u/s 148 of the Income Tax Act, 1961, on the issue of reassessment. Consequent thereupon, assessment u/s 143 of the Income Tax Act, 1961, came to be completed on September 29, 2003.

2. The aforesaid assessment order dated September 29, 2003, was challenged unsuccessfully by the respondent-assessee before the Commissioner of Income Tax (Appeals). The appellate authority dismissed the appeal preferred by the respondent-assessee on February 16, 2004. The order passed by the Commissioner of Income Tax (Appeals) dated February 16, 2004, was then challenged by the respondent-assessee before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal accepted the appeal and set aside the assessment order dated September 29, 2003.

3. The order passed by the Income Tax Appellate Tribunal in accepting the appeal preferred by the respondent-assessee reveals that the same was accepted on the ground that the notice issued to the respondent-assessee u/s 148 of the Income Tax Act, 1961, was defective. The appeal was, therefore, accepted on the basis of a technical defect. The conclusion rendered by the Income Tax Appellate Tribunal on the issue under reference is ascertainable from the following extracts from the order dated September 29, 2003:

In the instant case, the infirmity or defect relates to a jurisdictional aspect, namely, non-issuance of notice u/s 148 to the assessee sought to be subjected to reassessment proceedings. It is well understood that the requirement of issuing a valid notice u/s 148 is not merely a procedural requirement, but is a fundamental aspect impinging on the jurisdiction vesting with the Assessing Officer. If a notice suffers from a jurisdictional effect, such a jurisdictional defect cannot be cured by having resort to Section 292B of the Act.

The initiation of proceedings have itself been made considering the status of the assessee as ''individual''. Therefore, in so far as the assessment framed in the status of Hindu undivided family consequent to the notice u/s 148 of the Act dated February 6, 2003, is concerned, it is safe to deduce that the same was in the absence of a valid assumption of jurisdiction. This defect being a jurisdictional flaw, in our view, renders the assessment proceedings a nullity.

4. In order to challenge the determination rendered by the Income Tax Appellate Tribunal dated June 29, 2006, the Revenue has approached this Court by alleging that the following questions of law arise for determination:

1. Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was right in law in concluding that omission of status on notice u/s 148 means that it had been issued in individual status, even when as per the provisions of Section 292B of the Income Tax Act, such omissions/mistakes cannot render the assessment, notice or other proceedings invalid?

2. Whether, on the facts and in the circumstances of the case, non-mentioning of status in notice u/s 148 would constitute a jurisdictional mistake, especially when all other facts and the escaped income were mentioned in respect of the assessee''s Hindu undivided family?

5. During the course of hearing, learned Counsel for the respondent invited our attention to the fact, that a notice in terms of the order passed by the Income Tax Appellate Tribunal dated June 29, 2006, was issued in the name of Hindu undivided family by the Assessing Officer, in respect of the same income and for the same assessment year. The Assessing Officer has, therefore, cured the defect which was the basis of the acceptance of the appeal at the hands of the Income Tax Appellate Tribunal. Learned Counsel for the respondent also brought to our notice the fact that, consequent upon the issuance of the aforesaid notice u/s 148, a fresh assessment has been framed against the respondent-assessee. It is further pointed out, that the respondent-assessee assailed the findings recorded by the Assessing Officer (consequent upon the framing of the fresh assessment) before the Commissioner of Income Tax (Appeals). After the determination of the appeal at the hands of Commissioner of Income Tax (Appeals), the matter is now stated to be pending before the Income Tax Appellate Tribunal. It is, therefore, the contention of learned Counsel for the respondent-assessee, that in so far as the instant appeal is concerned, the same is only of academic value now,

inasmuch as, the technical defect depicted by the Income Tax Appellate Tribunal in its order dated September 29, 2003 has been cured.

6. Learned Counsel for the appellant in spite of acknowledging the factual position brought to our notice by the learned Counsel for the respondent-assessee, states that the issues of law for which adjudication of this Court had been sought (as had been extracted hereinabove) must necessarily be decided, and that such issues may arise again and again in different cases.

7. We do not wish to make any comments on the importance of the issue raised by the appellant in the instant appeal. We, however, have no difficulty in concluding that in so far as the present appeal is concerned, the same is merely of academic value, inasmuch as, for the same income arising for the same assessment year, the Assessing Officer has passed a fresh assessment order which is again the subject-matter of the appellate proceedings and is presently pending adjudication before the Income Tax Appellate Tribunal. Thus viewed, the proposition of law canvassed by the learned Counsel for the appellant in the instant appeal are purely of academic interest. We are satisfied that precious court time should not be wasted for determining the academic issues.

8. Accordingly, we decline to entertain the submissions of the appellant. We hereby dispose of the instant appeal as having been rendered infructuous after the Revenue has complied with and given effect to the order passed by the Income Tax Appellate Tribunal dated September 29, 2003.

