
(2008) 02 P&H CK 0301
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

Avtar Singh

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

General Clauses Act, 1897 — Section 27

Income Tax Act, 1961 — Section 142, 144, 147, 148, 149

Citation : (2008) 219 CTR 588 : (2008) 304 ITR 333

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mttal, J.—The instant appeal filed by the revenue u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is directed against the order dated 13-4-2007 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 181/Chd/2006 in case of the respondent for the assessment year 1998-99, by raising the following substantial questions of law:

(i) Whether on the facts and in the law, the Tribunal was justified in holding that reassessment has been made without mandatory requirement of service of notice u/s 148 of the Act, by ignoring the fact that notice issued on 30-3-2001 within the limitation u/s 149(1) of the Act was sent through registered post, which tantamounts to valid service as per Section 27 of the General Clauses Act, 1897.

2. In the present case, during the course of a search operation at the business premises of M/s Damini Resorts & Builders (P) Ltd., a copy of agreement of sale of land, allegedly entered into by the assessee respondent herein, with said M/s Damini Resorts & Builders (P) Ltd., was found. According to that agreement of sale, the assessee had agreed to sell his share of land situated in village Dhandra for a sum of Rs. 16,42,522. However, subsequently the registered sale deed with regard to the said land was executed only for Rs. 5, 22, 641 by suppressing sale

consideration to the tune of Rs. 11,19,920.

3. It is the case of the revenue that the assessee did not file return of income in respect of capital gain arising from the aforesaid sale transaction. With the object to bring the said capital gain to tax, the assessing officer issued notice u/s 148 of the Act to the assessee on 30-3-2001. Subsequently, notices u/s 142(1) of the Act were issued, but no return of income was filed by the assessee in response to those notices. Consequently, the assessing officer completed the assessment to the best of his judgment u/s 144 of the Act and assessed the long-term capital gain at Rs. 13,70,680.

4. Aggrieved against the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeal)-I, Ludhiana (hereinafter referred to as "the Commissioner (Appeals)"). Since nobody attended the proceedings, therefore, the said appeal was dismissed, and the order of the assessing officer was confirmed. Subsequently, the assessee filed application for recalling the said order. The application was also dismissed by the Commissioner (Appeal). Against the said order, the assessee approached the Tribunal, who vide order dated 22-9-2005 allowed the appeal of the assessee and directed the Commissioner (Appeals) to decide the appeal filed by the assessee on merits. Consequently, the Commissioner (Appeals) allowed the appeal of the assessee holding that the assumption of jurisdiction by the assessing officer was wrong as there was no service of notice u/s 148 of the Act.

5. Not satisfied with the order of the Commissioner (Appeals), the revenue preferred appeal before the Tribunal, who vide the impugned order dated 13-4-2007 has dismissed the appeal, while holding that Section 148 of the Act makes it mandatory for the assessing officer to serve a notice before making reassessment or recomputation u/s 147 of the Act. It has been held that valid service of notice u/s 148 is condition precedent for validity of proceedings u/s 147 of the Act. It has been further held that mere issuance of notice u/s 148 within the time allowed u/s 149 of the Act was not enough, but it has to be proved that notice u/s 148 of the Act was served upon the assessee.

6. We have heard learned Counsel for the appellant revenue and gone through the impugned order passed by the Tribunal.

7. Counsel for the appellant revenue submits that in the instant case, notice u/s 148 of the Act was sent to the assessee through registered post on 30-3-2001. Therefore, the same tantamounts to a valid service as per Section 27 of the General Clauses Act, 1897.

8. We are not inclined to accept the submission made by learned Counsel for the appellant revenue, as in the present case, no evidence in the shape of postal receipt was produced by the revenue before the authority that actually, the said notice was sent by registered post and was served upon the assessee. The Tribunal has affirmed the categorical finding recorded by the Commissioner (Appeals) that in the present case, the revenue has not led any evidence to show

that notice u/s 148 of the Act was actually served upon the assessee. In our view, the Commissioner (Appeals) as well as the Tribunal have recorded a pure finding of fact, after considering the material available on record to the effect that notice u/s 148 of the Act was actually not served upon the assessee, which was a condition precedent for making reassessment or recomputation u/s 147 of the Act. We do not find any ground to interfere in the said finding of fact, and in our view no substantial question of law is arising from the order of the Tribunal. Dismissed.