
(1985) 04 CAL CK 0032

In the Calcutta High Court

Case No : Income-tax Reference No. 192 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Chitranjali

RESPONDENT

Date of Decision : 08-04-1985

Acts Referred:

Income Tax Act, 1961 — Section 153, 153(1)

Citation : (1986) 50 CTR 226 : (1986) 159 ITR 801

Hon'ble Judges : Dipak Kumar Sen, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : M. Bhattacharjee, for the Appellant;

Judgement

AJIT Kumar Sengupta, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961.

2. The assessment of the assessee, a firm, for the assessment year J 966-67, was completed by the Income Tax Officer on a total income of Rs. 1,14,017 on the basis of the return of income filed on July 7, 1966. The said assessment was completed by the Income Tax Officer on March 16, 1971.

3. The assessee went on appeal before the Appellate Assistant Commissioner. Before him, an additional ground was allowed to be urged to the effect that before the said assessment was completed by the Income Tax Officer on March 16, 1971, two revised returns were filed by the assessee, one on May 16, 1970, and the other on July 7, 1970, as certain alleged omissions had occurred in the original return filed on July 7, 1966, but the assessment was made by the Income Tax Officer on March 16, 1971, ignoring the said revised returns and as such the said assessment was bad. It was submitted before the Appellate Assistant Commissioner by the assessee that in the first return filed on July 7, 1966, the status of the assessee was not correctly declared and necessary particulars were not furnished in Part III of the return in respect of the names and other particulars of the partners. The above defects were sought to be

rectified in the return which was filed on May 16, 1970, by declaring the status of the assessee as a registered firm and furnishing all necessary particulars of the partners of the firm. Along with the said return, an application for continuation of registration was also filed. Another revised return was filed on July 8, 1970, incorporating all the details in the earlier revised return which was submitted on May 16, 1970, giving additional information with regard to the loss of Rs. 25,403 which the appellant claimed for setting off against the business profits of Rs. 96,937. The Appellate Assistant Commissioner accepting the submission of the assessee held that since the Income Tax Officer had before him two revised returns, the Income Tax Officer was not justified in making the assessment on the basis of the return filed on July 7, 1966. The Appellate Assistant Commissioner, therefore, set aside the assessment and directed the Income Tax Officer to frame the assessment afresh on the basis of the revised returns in accordance with law after issuing notices under Sections 142(1) and 143(3) of the Income Tax Act, 1961.

4. The assessee challenged the said decision of the Appellate Assistant Commissioner before the Tribunal. The Tribunal after hearing the submissions of the parties observed that the relevant assessment with reference to the revised return filed on July 7, 1970, ought to have been completed before the expiry of one year from the date of filing of the revised return u/s 139(5) of the Act. Thus, the assessment on the basis of the revised return should have been completed by July 6, 1971. The Income Tax Officer completed the assessment on March 6, 1971, with reference to the original return filed on July 7, 1966, and the Appellate Assistant Commissioner passed an appellate order on July 27, 1973, when the time-limit for completion of the relevant assessment with reference to the revised return filed on July 7, 1970, expired in view of the provision of Section 153(1)(c) of the Act. The Tribunal held that the impugned assessment was not legal and that being so when the time-limit for completion of the relevant assessment has already expired, the Appellate Assistant Commissioner was not justified in setting aside the said assessment order. The Tribunal also held that the Appellate Assistant Commissioner could not also extend the period of limitation overriding the provisions of Section 153(1)(c) of the Act. The Tribunal, therefore, held that the Appellate Assistant Commissioner should have cancelled the impugned assessment order as illegal and void and, accordingly, the Tribunal cancelled the assessment order. On the aforesaid facts, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment order made by the Income Tax Officer on the basis of the original return in disregard of the revised return was not legal and in that view cancelling the same ?"

5. At the hearing, Mr. M. Bhattacharjee, the learned advocate for the Revenue, submitted that the assessment was made within time and as such the Appellate Assistant Commissioner was justified in giving a direction to the Income Tax

Officer to make a fresh assessment if the assessment was not properly framed. The Tribunal fell into error in holding that if the assessment is to be completed on the basis of the revised return in pursuance of the direction of the Appellate Assistant Commissioner, it would have the effect of enlarging the period of limitation.

6. Section 153 of the Act prescribes the time-limit for completion of assessment and reassessment. Section 153(1)(a) provides that no order of assessment shall be made u/s 143 or Section 144 at any time after the expiry of four years from the end of the assessment year in which the income was first assessable where such assessment year is an assessment year commencing on or before the 1st day of April, 1967. This is the normal period of limitation. Where, however, an assessee files a belated return u/s 139(4) or a revised return u/s 139(5), the said period of limitation is extended in terms of Clause (c) of Section 153(1). In such a case, the assessment has to be completed within the period of one year from the date of filing of such return notwithstanding expiry of the normal period of limitation. It obviously does not deal with circumstances when an assessment made within the period of limitation would be invalid or illegal. The assessment has to be made either u/s 143 or Section 144 of the Act. It appears from the assessment order that the assessee's representative was heard from time to time and the books of account and other supporting evidence were examined by the Income Tax Officer. The Income Tax Officer also considered the profit and loss account. Thereafter, the assessment was completed u/s 143(3) within the period of limitation prescribed u/s 153(1)(a). As a matter of fact, in the first revised return, the status of the assessee was claimed as registered firm. The Income Tax Officer rejected the claim by an order u/s 185. The said fact has been recorded in the assessment order itself. In the second revised return, the assessee is stated to have given additional evidence regarding its claim for set-off of the loss. The Income Tax Officer rejected the claim. A return can only be prepared on the basis of the books of account and documents and vouchers maintained by the assessee. When the assessment was completed after examining the books of account, profit and loss account and other relevant documents and all the contentions of the assessee were considered, it is immaterial whether the revised return as such was considered by the Income Tax Officer or not. On the facts and in the circumstances of this case, the assessment made by the Income Tax Officer ignoring the revised return may be an erroneous assessment but it will not be a nullity, the assessment having been made within the period of limitation. The Income Tax Officer may have committed an error but such an error is within his jurisdiction which would not render the assessment void.

7. In the instant case, the assessment has been completed on a return filed by the assessee within the period prescribed u/s 153(1)(a) of the Act. It was not contended that in view of the subsequent return filed, the original return was invalid or non est. Section 139(5) permits an assessee, if he discovers an omission or wrong statement in the original return to file a revised return at any

time before the assessment is made. Such revised return does not wash away the original return. Such revised return does not exonerate the assessee of any default or offence committed with reference to the original return. As a matter of fact, in this case, the Income Tax Officer in the course of the assessment initiated penalty proceedings u/s 271(1)(c) of the Act. An originally filed return is a return in all essential respects and the revised return only cures the defects contained in the original return. In disposing of an appeal, the Appellate Assistant Commissioner may confirm, reduce, enhance or annul the assessment or he may set aside the assessment or refer the case back to the Income Tax Officer for making a fresh assessment in accordance with the direction given by him. On appeal from the assessment, if it was completed within the period of limitation, the Appellate Assistant Commissioner may set aside the assessment and direct the Income Tax Officer to make a fresh assessment, if the assessment is otherwise not in conformity with law or procedure. The Income Tax Officer has the same power in making such fresh assessment as he had originally while making the assessment u/s 143 of the Act. If the Appellate Assistant Commissioner does not limit the scope of the enquiry by the Income Tax Officer to any specific aspect or issue, but only sets aside the entire assessment and directs the Income Tax Officer to make the assessment afresh, the power of the Income Tax Officer is not affected by anything which he might have omitted to do in the original order of assessment which was set aside by the Appellate Assistant Commissioner. In this case, the entire assessment order was challenged and the Appellate Assistant Commissioner, after accepting the contention of the assessee about the infirmity in the assessment, set aside the assessment directing the Income Tax Officer to make a fresh assessment. The Income Tax Officer in reframing the assessment can take into account all the returns filed before him.

8. Section 153(3)(ii) of the Act provides that where an assessment is made in consequence of or to give effect to any finding or direction contained in the order passed by the Appellate Assistant Commissioner, u/s 250 of the Act, the limitation prescribed u/s 153(1)(a) or 153(1)(c) will not apply. Therefore, once the original assessment was completed within the period of limitation, there is no further prohibition for making a fresh assessment in consequence of or to give effect to any finding or direction contained in the order passed by the Appellate Assistant Commissioner. The Supreme Court in the case of *Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi*, , construed the expression "direction" in Section 153(3)(ii) of the Act. The Supreme Court held as follows (at p. 19):

"As regards the expression "direction" in Section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions "finding" and "direction" in Section 153(3)(ii) of the Act must be accordingly confined. Section 153(3)(ii) is not a provision enlarging the jurisdiction of the

authority or court. It is a provision which merely raises the bar of limitation for making an assessment order u/s 143 or Section 144 or Section 147 : Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri, ."

9. The Appellate Assistant Commissioner is empowered to give the direction for making a fresh assessment. In the instant case, the Appellate Assistant Commissioner gave such direction and in view of the provision contained in Section 153(3)(ii), the bar of limitation is raised. The Tribunal did not correctly appreciate the scope of Section 153(3). Where an assessment is made ignoring the material on record, it may be an illegal assessment but it cannot be said that such assessment could not have been made at all by the Income Tax Officer. The Income Tax Officer has the jurisdiction to assess the income of the assessee u/s 143 of the Act. In doing so, he may have acted erroneously. The appellate authority can always correct the error committed by the Income Tax Officer. The Tribunal proceeded on the footing that the Income Tax Officer having completed the assessment ignoring the revised returns, made no assessment at all and pursuant to the direction of the Appellate Assistant Commissioner, the Income Tax Officer would be making an assessment for the first time and, accordingly, it would not be an assessment within the period prescribed u/s 153(1)(c) of the Act. We are unable to uphold this view taken by the Tribunal. The original assessment may be an irregular or erroneous assessment but the assessment none the less was completed within the normal period of limitation. Therefore, at the time of making fresh assessment, the bar of limitation is raised in view of the provisions of Section 153(3)(ii) of the Act. The direction given by the Appellate Assistant Commissioner was necessary for the disposal of the appeal pending before him. The defect complained of by the Tribunal was not a defect affecting the jurisdiction of the Income Tax Officer to make the assessment. We are, therefore, of the view that the Tribunal was not justified in cancelling the assessment.

10. For the reasons aforesaid, we answer this question in the reference in the negative and in favour of the Revenue. There will be no order as to costs.

Dipak Kumar Sen, J.

11. I agree.