
(2008) 08 RAJ CK 0006
In the Rajasthan High Court

Commissioner of Income Tax

APPELLANT

Vs

Dr. Devendra Gupta

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (2008) 220 CTR 629 : (2011) 336 ITR 59

Hon'ble Judges : N.P. Gupta, J; Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These five appeals arise out of the common Judgment of the learned Tribunal dt. 8th Sept., 2005. The appeals relate to different assessment years, starting from 1994-95 to 1998-99. The appeals were admitted on different dates, by framing the common questions of law being:

(i) Whether on the facts and circumstances of the case, the Tribunal was justified in adjudicating the validity of reasons accorded by the AO at the time of assuming jurisdiction u/s 147 with reference to the ultimate finding reached by the AO notwithstanding holding that the information received from DDI constitutes valid material on the basis of which required satisfaction can be reached by the AO for assuming jurisdiction u/s 147?

(ii) Whether on the facts and in the circumstances of the case the learned Tribunal was Justified in quashing the reassessment and the consequential additions made therein holding that the passing of order u/s 143(3) r/w Section 147 assessing the other income based on assessee's alleged statement before the Dy. Director of IT because it did not form part of reasons recorded u/s 148?

2. Though two separate questions have been framed, but in substance they comprehend the common question. The precise controversy is, that reasons were recorded for assuming certain income to have escaped assessment, however during reassessment proceedings, that income was not found to have escaped

assessment, but then on the basis of certain other material, certain other incomes were found to have escaped from assessment to tax, and therefore, reassessment had been made. As such, the question precisely is, as to whether in case where despite existence of material on record, to arrive at a conclusion about escapement of certain income from assessment, in the reassessment proceedings where such income is not found to have escaped assessment, it is open to the AO to complete the reassessment proceedings, by finding some other income, to be liable to be subjected to tax, which is found by the AO, in the reassessment proceedings, to have been required to be taxed in the original assessment.

3. In our view, this question cannot be said to be any more *res Integra*, in view of the judgment of this Court dt. 20th May, 2008, rendered In IT Appeal No. 65 of 2006, Commissioner of Income Tax Vs. Shri Ram Singh, wherein the judgment of Punjab & Haryana High Court in Commissioner of Income Tax Vs. Atlas Cycle Industries, was considered and followed. Various aspects of language of Section 147 were examined in detail, and it was held as under:

If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings u/s 147 the AO, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings u/s 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings u/s 147, the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the Jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings u/s 147.

4. We have not been shown any contrary view, to have been taken, whether by the Hon''ble Supreme Court, or by any other High Court, so far.

5. In that view of the matter, following the aforesaid judgment in Shri Ram Singh's case (*supra*), the questions are answered against the Revenue, and in favour of the assessee.

Consequently, the appeals are dismissed.