(2007) 02 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Gardhara Singh RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:
Income Tax Act, 1961 — Section 147(a), 148(2)

Citation : (2007) 02 P&H CK 0100

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—Following question of law has been referred for the opinion of this court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar arising out of the order dated 30-6-1989 passed by it in ITA No. 375 ASR of 1987 in respect of the assessment year 1967-68:

Whether the Tribunal was legally right in holding uiat reassessment proceedings u/s 147(a) of the Act were invalid because in the consequential assessment no addition came to be made in respect of income which was stated to have had escaped assessment in the reasons recorded under sectionu148(2) of the Act for the assessment year 1967-68?

2. Brief facts of the case are that the original assessment was completed on 29-3-1971 computing taxable income of Rs. 31,700. After obtaining approval of the Commissioner, Income Tax, Jalandhar, the assessing officer completed the assessment u/s 147(a) of the Act at an income of Rs. 2,19,930 on 22-3-1980 which was set aside by the Commissioner Income Tax (Appeals), Jalandhar. Accordingly fresh reassessment was made at an income of Rs. 74,930 which included addition of Rs. 42,800. It was alleged that the aforementioned amount of Rs. 42,800 was unaccounted money belonging to the assessee which had been deposited with one Shri Daulat Singh. According to the assessing officer, the assessee had deposited the aforementioned amount with one Daulat Singh which is shown from the material recovered from his (Daulat Singh) premises. The Appellate Assistant Commissioner while passing order u/s 250(6) of the Act

categorically held that the reasons recorded for reopening assessment u/s 147(a) of the Act were different and the assessment has been made on the basis of some other reasons. The Tribunal has placed reliance on para 4 of the order of the Appellate Assistant Commissioner, which reads as under:

I have given a careful consideration to the facts and circumstances of the case. I have also scrutinised the reasons recorded for the re-opening of assessment u/s 147(a). From the reasons recorded I find that the original assessment was reopened because the appellant''s share in the unaccounted income of the company called M/s. New Samundri Transport Co. Pvt. Ltd., Ferozepur of which the appellant was a shareholder was required to be added which had escaped the assessment at the time of original assessment. There is no mention about the unaccounted deposit of Rs. 42,800 allegedly kept by the appellant with Shri Daulat Singh. It is not known as to how it struck the Income Tax Officer after the notice u/s 148 had been issued that the amount of Rs. 42,800 was also required to be added to the income of the appellant. Interestingly enough, no addition on account of the appellant''s share in the unaccounted income of the said company has been made to the income for which purpose the original assessment was re-opened under B Section 147(a). In my opinion, the reassessment proceedings u/s 147(a) undertaken by the Income Tax Officer was not valid in the eye of law and hence the Order passed by the Income Tax Officer making an addition at Rs.42,800 is unsustainable. The order is therefore quashed.

3. It is well-settled proposition of law that proceedings u/s 147(a) of the Act could be initiated on specific reasons which are required to be confronted to the assessee. It is further well-settled that reasons for framing the reassessment cannot be different than the one which constituted the basis for initiation of proceedings u/s 147(a) of the Act. In that regard, reliance may be placed on the observations of Hon''ble the Supreme court in the case of Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., . The view of the Hon''ble Supreme Court emerges from the following observations:

...in proceedings u/s 147 of the Act, the Income Tax Officer may bring to charge items of income which had escaped assessment other than or in addition to that item or items which have led to the issuance of the notice u/s 148 and where reassessment is made u/s 147 in respect of income which has escaped tax, the Income Tax Officer''s jurisdiction is confined to only such income which has escaped tax or has been underassessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting the assessee to reagitate questions which had been decided in the original assessment proceedings. It is only the underassessment which is set aside and not the entire assessment when reassessment proceedings are initiated. The Income Tax Officer cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject-matter of proceedings u/s 147.... (p. 320)

4. Following Sun Engg. Works (P.) Ltd''s case (supra), similar view was expressed

by this court in the case of Vipin Khanna Vs. Commissioner of Income Tax and Others, .

5. Therefore, the question referred is to be answered against the revenue and in favour of the assessee. The reference is disposed of accordingly.

