(1994) 07 RAJ CK 0035

In the Rajasthan High Court

Case No : Income Tax Reference No. 7 of 1986

Commissioner of Income Tax APPELLANT

Vs

Gauri Shanker Patel RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Income Tax Act, 1961 — Section 143, 143(3), 144, 2(40), 217

Citation : (1995) 214 ITR 49

Hon'ble Judges : V.K. Singhal, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : D.S. Shishodia and Sandeep Bhandawat, for the Appellant; R. Mehta, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, has referred the following question of law arising out of its order dated January 1, 1985, in respect of the assessment years 1977-78, 1978-79 and 1979-80 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the assessment completed for the first time u/s 145(3) of the Income Tax Act, 1961, in pursuance of issue of notice u/s 148 can be termed as reassessment and the assessment completed as such is not a regular assessment thereby deleting the interest charged u/s 217 ?"

2. The brief facts of the case are that proceedings were initiated u/s 148 for reassessment. Interest was charged u/s 217 in such proceedings. The words "regular assessment" used u/s 217 have been interpreted by this court in Commissioner of Income Tax Vs. Mannalal Nirmal Kumar, and it was held that a reassessment which has been framed u/s 147/148 cannot be considered to be a regular assessment. The interest in such of the provisions cannot be charged u/s 217. The assessment u/s 143 or 144 alone are contemplated within the term "regular assessment" u/s 2(40) of the Act and though the word "assessment" comprehends reassessment, the words "regular assessment" would not cover an assessment which has been made u/s 147/148 of the Act and as such the

assessment or reassessment made u/s 147 is not a regular assessment in which the liability of interest in terms of Section 217 could be fastened.

3. Accordingly, it is held that the Income Tax Appellate Tribunal was justified in holding that the assessment completed for the first time u/s 143(3) in pursuance of the notice issued u/s 148 can be termed reassessment and the assessment completed as such is not a regular assessment thereby deleting the interest charged u/s 217 of the Act.

