(1997) 09 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No. 98 of 1986

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

GURU AMARJIT SINGH. — RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:
Income Tax Act, 1961 — Section 125A, 144B, 256

Citation : (1998) 145 CTR 145 : (1998) 99 TAXMAN 16

Hon'ble Judges : N. K. Agrawal, J

Bench : Division Bench

Judgement

N. K. AGRAWAL, J. :

The following question has been referred to this Court by the Tribunal under s. 256(1) of the IT Act, 1961 (for short, "the Act") :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the reference made under s. 144B of the IT Act was bad in law and the assessment made on 6th August, 1984 is barred by limitation ?

2. Return was filed by the assessee for the asst. yr. 1981-82, declaring income of Rs. 36,110. The ITO proposed variation in the assessees income for more than Rs. 1,00,000 and, therefore, he invoked s. 144B of the Act, Draft of the proposed assessment order was forwarded by the ITO to the assessee under s. 144B(1) on 27th March, 1984. The assessee filed objections on 4th April, 1984. Copy of the draft assessment order along with the objections was forwarded by the ITO to the IAC. Directions from the IAC were received 1984 (sic). Assessment was framed by the ITO on an income of Rs. 1,99,340 on 6th August, 1984.

3. The assessee challenged the assessment on the ground that the ITO wrongly followed the procedure laid down in s. 144B of the Act and, therefore, the extended period of limitation was not available for completing the assessment. It was claimed that the ITO had concurrent jurisdiction along with the IAC under s. 125A of the Act and, therefore, in the light of sub-s. (7) of s. 144B, the

procedure laid down in s. 144B was not required to be followed.

The Tribunal agreed with the assessee and annulled the assessment order on the ground that s. 144B had been wrongly applied by the ITO and, therefore, the extended period of limitation was not available for completing the assessment. It was held by the Tribunal that sub-s. (7) of s. 144B did not require the ITO to follow the procedure laid down in that section if the ITO had concurrent jurisdiction together with the IAC concerned.

4. A similar question has been examined by this Court in IT Ref. No. 63 of 1985 CIT vs. Gheru Lal Bal Chand, decided on 25th September 1997 [reported at (1988) 144 CTR (P&H) 228 and it has been held that sub-s. (7) of s. 144B was not attracted and the procedure, laid down in that section, was rightly followed as the ITO, having concurrent jurisdiction with the IAC under s. 125A of the Act, proposed to make variation in the income of the assessee exceeding Rs. 1,00,000. Following the said view the question is answered in the negative, i.e., in favour of the Department and against the assessee.