
(1988) 12 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 227 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Harnam Singh Harbans Singh

RESPONDENT

Date of Decision : 16-12-1988

Acts Referred:

Income Tax Act, 1961 — Section 147

Citation : (1989) 179 ITR 221

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; B.S. Gupta, Senior Advocate and Sanjay Bansal, for the Respondent

Judgement

S.S. Sodhi, J.—The question of law referred for the opinion of this court is in the following terms :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in annulling the reassessment framed by the Income Tax Officer in pursuance of notice u/s 147(a) on the ground that it was a case in which the provisions of Section 147(b) and not Section 147(a) of the Income Tax Act, 1961, could be applied ?"

2. The factual background relevant to the controversy raised is that the assessee is a registered firm doing the business of running a brick kiln. Keeping in view the provisions of the Brick Price Control Orders issued from time to time, the assessee-firm charged royalty from its customers. Up to the accounting period ending on March 31, 1971, a sum of Rs. 28,160 had been collected as royalty. In the return filed on September 27, 1971, for the assessment year 1971-72, the assessee declared an income of Rs. 31,295. In the return, the said amount of Rs. 28,160, collected as royalty, was also mentioned but was not shown as the income of the assessee. The Income Tax Officer completed the assessment on an income of Rs. 34,980 which later, on appeal, was reduced to Rs. 32,580,

3. In the meanwhile, the levy of royalty under the Brick Price Control Orders which had been challenged in writ proceedings before our High Court was decided on March 25, 1971, in *Amar Singh Modi Lal Vs. State of Haryana and Others*, wherein it was held that the Government was not competent to levy any royalty.

4. It was thereafter that on February 13, 1978, the Income Tax Officer issued a notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), to the assessee with regard to the assessment year 1971-72 for reassessment u/s 147(a) of the Act. The Income Tax Officer thereafter proceeded to complete the assessment under this provision of law by including the said amount of Rs. 28,160 in the total income of the assessee for the year in question. This decision was upheld in first appeal but was reversed by the Tribunal holding that the assessee was not bound to include the amount of Rs. 28,160 collected as royalty in its return of income as the assessee had to treat it as a liability payable to the Government, till the decision of the court came in March, 1971, that it was not leviable. Further, it was observed that the royalty amount had been duly mentioned in the balance-sheet and the Income Tax Officer was supposed to have gone through it and, therefore, this was a case which could have been further processed only u/s 147(b) of the Act and not u/s 147(a) of the Act and the reassessment thus made in pursuance of the notice u/s 148 of the Act being beyond the period of four years had, therefore, to be annulled.

5. No exception can indeed be taken to the view expressed by the Tribunal. The relevant precedent being provided by the judgment of the Supreme Court in *Gemini Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others*, where, in proceedings for the original assessment, the assessee-firm had not disclosed certain transactions evidenced by certain drafts but the Income Tax Officer had, on his own, discovered the facts relating to them. By oversight, however, he did not thereafter bring the amounts represented by the drafts to tax as the income of the assessee. Later, the Income Tax Officer issued a notice u/s 147(a) of the Act with a view to assess the said amounts as the assessee's income from undisclosed sources. In dealing with this matter, the Supreme Court held that after discovery of the primary facts relating to the transactions evidenced by the drafts, it was for the Income Tax Officer to make the necessary enquiries and draw proper inference as to whether the amounts represented by the drafts could be treated as part of the total income of the firm. This the officer did not do. It was plainly a case of oversight and it could not, therefore, be said that income chargeable to tax had escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. The Income Tax Officer could not thereafter take recourse to Section 147(a) to remedy the error resulting from his own oversight. The rationale of this judgment clearly applies to the case here.

6. The point to be emphasised in the present case is that the amount collected as royalty, namely, Rs. 28,160, was specifically mentioned in the return. A plain

reading of Explanation 2 to Section 147 of the Act would show that the return as filed by the assessee would not be covered by it. This was thus clearly a case where the Income Tax Officer could not have proceeded u/s 147(a) of the Act as he had purported to do in this case and that too after the prescribed period of four years had elapsed.

7. Such thus being the situation here, the reference has consequently to be answered in the affirmative, in favour of the assessee and against the Revenue. There will be no order as to costs.