(1990) 08 BOM CK 0118

In the Bombay High Court

Case No : Income-tax Application No. 155 of 1988

Commissioner of Income Tax APPELLANT

Vs

Jayant Chakravarty RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 144B, 147, 148

Citation : (1991) 189 ITR 481

Hon'ble Judges : T.D. Sugla, J;Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetley, for the Appellant; Mrs. Shobha Jagtiani, for the Respondent

Judgement

T.D. Sugla, J.—This is an application u/s 256(2) of the Income Tax Act, 1961. The Department has sought to raise the following question as a question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in canceling the assessment made u/s 143(3) read with sections 147 and 144B holding that the reopening of the proceedings itself was void ab initio and bad in law ?"

2. The proceedings relate to the assessment year 1976-77. In the return filed for the year, the assessee had shown his previous year as ending on October 31, 1975, in respect of income other than share income from M/s. Park West. A partnership-firm, started on and from December 11, 1975. The assessee had formed the said partnership with some others on December 11, 1975, and had, by way of capital, contributed an immovable property being premises No. 5-6 Union Park, Pali Hill, Bandra, Bombay. The value of the said property was taken at Rs. 4,10,000. In the statement filed with the return, it was clarified that no income under the head "Capital gains" was shown as the asset brought by way of capital contribution did not amount to transfer of a capital asset. The assessment was completed on that basis.

3. In the subsequent assessment year, the Income Tax Officer took the view that the assessee''s contributing his immovable property to the firm as capital amounted to transfer of a capital asset and the surplus computed was liable to tax as income under the head "Capital gains". The addition was deleted by the Commissioner (Appeals) on the ground that the surplus was not assessable as income for the assessment year, i.e., 1977-78. The order of the Commissioner (Appeals) was confirmed by the Tribunal.

4. The Income Tax officer reopened the assessee''s assessment for the assessment year 1976-77 u/s 148 read with section 147(b). The reopening was challenged by the assessee. Reasons recorded by the Income Tax Officer are noted in paragraph 7 of the Tribunal''s appellate order. There is no reference to the order of the Commissioner of Income Tax (Appeals) passed for the assessment year 1977-78 or to that of the Tribunal for that year in the reasons recorded. The reasons for the Income Tax Officer''s formation of belief that the assessee''s income had escaped assessment is stated to be that the assessee''s statement regarding previous year referred only to such sources the assessee had declared income from and that elucidation and clarification about it was actually given for the first time only before the appellate authority.

5. The Tribunal held and, in our judgment, rightly, that there was no fresh information within the meaning of section 147(b) and, therefore, there was no valid assumption of jurisdiction.

6. The condition precedent for assumption of jurisdiction u/s 147(b) is fresh information which means information subsequent to the completion of the assessment in consequence of which the Income Tax Officer can reasonably form a belief that income had escaped assessment. The order of the Commissioner of Income Tax (Appeals) could constitute such information but that is not the information recorded as a reason for reopening the assessment. The reason recorded is only a change of opinion. The answer to the question is, thus, obvious.

7. Rule is, accordingly, discharged.

8. No order as to costs.