(1995) 03 RAJ CK 0047

In the Rajasthan High Court

Case No : Income Tax Reference No. 3 of 1985

Commissioner of Income Tax — APPELLANT

Vs

Kapoor Chand Ram Chand — RESPONDENT

Date of Decision : 14-03-1995

Acts Referred:
Income Tax Act, 1961 — Section 139, 143, 143(3), 147, 148

Citation : (1995) 129 CTR 457 : (1995) 216 ITR 318

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

Bench : Division Bench

Advocate : G.S. Bafna, for the Appellant;

Judgement

V.K. Singhal, J.—On the request of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated September 3, 1984, in respect of the assessment year 1972-73 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in not upholding the interest charged by the Income Tax Officer under Sections 139(8) and 217 of the Income Tax Act, 1961, while completing the assessment for the first time u/s 143(3)/147 of the Income Tax Act, 1961 ?"

2. The facts of the case are that in this case, a notice u/s 148 was issued by the Income Tax Officer to the assessee who is a partner in the firm, Kapoor Chand Ram Chand, Alwar. A property was constructed at Alwar by Kapoor Chand and the total cost of construction was not disclosed as no return was filed u/s 139(1) and in pursuance of the notice issued u/s 148, the return was filed. The interest u/s 139(8) as well as u/s 217 was charged from the assessee. Against the said order, an appeal was preferred to the Appellate Assistant Commissioner who found that there is nothing illegal in the charging of interest and since the income was to be determined in accordance with the order of the Appellate Assistant Commissioner, it was directed that recalculation be made accordingly.

In the second appeal before the Income Tax Appellate Tribunal, it was observed that the assessment u/s 147 is not a regular assessment and, therefore, interest under Sections 217 and 139(8) cannot be charged. It was also submitted that even the first assessment u/s 148 cannot be considered to be a regular assessment within the meaning of Section 214 of the Income Tax Act read with Sections 217 and 139(8). The Income Tax Appellate Tribunal held that the charging of interest was not justified.

3. We have considered over the matter. The point in controversy is already concluded by the decision of this court in the case of Commissioner of Income Tax Vs. Mannalal Nirmal Kumar, Charles D''souza Vs. Commissioner of Income Tax, Karnataka-II, S. Mageshwari Vs. Assistant Commissioner of Income Tax and another, Commissioner of Income Tax Vs. Triple Crown Agencies, and Commissioner of Income Tax Vs. Smt. Padam Kumari Surana,

4. Looking to the opinion already given by this court, we are of the view that the Income Tax Appellate Tribunal was justified in not upholding the interest charged by the Income Tax Officer u/s 139(8) and 217 of the Income Tax Act, 1961, while the assessments for the first time, were framed u/s 143(3)/147 of the Income Tax Act, 1961.

5. The reference is answered in favour of the assessee and against the Revenue. No order as to costs.