(2015) 09 P&H CK 0235

In the Punjab And Haryana At Chandigarh

Case No : ITA No. 84 of 2009 (O and M)

Commissioner of Income Tax APPELLANT

Vs

Mangal Singh RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:
Income Tax Act, 1961 — Section 143(2), 143(3), 260A, 292BB

Citation : (2015) 09 P&H CK 0235

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Tajender K. Joshi, Advocate, for the Appellant; Ravi Shankar and B.M. Monga, Advocates, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 31.7.2008 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Delhi Bench "E", New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 3246/D/2004, for the assessment year 2000-01, claiming the following substantial questions of law:-

A. Whether, on the facts and in the circumstances of the case, the Ld. ITAT is right in law in holding that the assessment framed by the Assessing Officer u/s 143(3) in the case of the assessee Mangal Singh, HUF is invalid and having annulled the same, deciding the grounds of appeal taken by the revenue on merits, is merely academic and therefore the Hon''ble ITAT refused to consider the case on merits?

B. Whether, on the facts and in the circumstances of the case, the Ld. ITAT is right in law in holding the assessment framed by Assessing Officer u/s 143(3) in the case of the assessee Mangal Singh, HUF as invalid and annulling the same, even when the assessee himself filed the revised return in the status of HUF at the same income as that in original return and also filed evidence in support of HUF status and accepted an agreed order in the status of HUF?

2. Put shortly, the facts necessary for disposal of the present appeal as mentioned therein are that the assessee filed his original return on 24.1.2001 for the assessment year 2000-01 in the status of ''individual'' declaring the income at Rs. 7,64,920/-. Subsequently, he filed the revised return on 26.3.2002 in the status of ''HUF'' with no variations in the income. The said case was selected for scrutiny and notice under Section 143(2) of the Act was issued on 4.9.2002 along with questionnaire. The assessment was framed by the Assessing Officer vide order dated 28.3.2003 (Annexure A-I) under Section 143(3) of the Act at Rs. 92,11,020/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT (A)"]. The CIT(A) vide order dated 11.5.2004 (Annexure A-II) partly allowed the appeal and deleted the addition of Rs. 77,97,408/-. Against the order of the CIT(A), the revenue filed an appeal before the Tribunal whereas the assessee filed cross objections. The Tribunal vide order dated 31.7.2008 (Annexure A-III) dismissed the appeal of the revenue and allowed the cross-objections filed by the assessee. It was held by the Tribunal that the assessment in the status of HUF was invalid and that the ground of appeal taken by the revenue on merits was merely academic. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the parties.

4. The Tribunal had adjudicated the cross-objection filed by the assessee holding that the assessment proceedings in the status of HUF of Shri Mangal Singh was invalid. It was contended by the learned counsel for the revenue that initially the return was filed by the assessee on 24.1.2001 in the status of individual which was later on revised on 26.3.2002 by claiming the status of HUF. In such a situation, no benefit could be derived by the assessee by urging that no notice under Section 143(2) of the Act was issued to the assessee in the status of HUF. Further reliance was placed upon the judgment of this Court in The Commissioner of Income Tax, Bathinda v. M/s. Panchvati Motors (P) Ltd. ITA No. 292 of 2008 decided on 3.5.2011.

5. Controverting the aforesaid submissions, learned counsel for the assessee, in view of judgment of this Court in Commissioner of Income Tax Vs. Rohtas, argued that the Tribunal was right in deciding that the assessment order in the status of HUF was void.

6. We find merit in the contention of learned counsel for the revenue. The assessee himself had filed the return in the status of HUF declaring the same income which was earlier filed in the individual status. Once the assessee had filed the return in the status of HUF and did not raise any objection to the framing of assessment in that status, it shall not be open for the assessee to take contradictory stand before the appellate authority.

7. Further, Section 292BB of the Act was introduced in the Act by Finance Act, 2008 effective from 1.4.2008. The scope and the applicability of Section 292BB of the Act was considered by this Court in M/s. Panchvati Motors (P) Ltd.''s case

(supra) wherein it was observed that where an assessee appears and cooperates in the proceedings then later on he is precluded from raising objection that no notice was served upon him in time or was served upon him in an improper manner. The provision was held to be applicable to all pending proceedings. The relevant observations recorded therein read thus:-

"10. Section 292BB of the Act was inserted by Finance Act, 2008, w.e.f. 1.4.2008. It reads thus:-

"292BB Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon on him has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in any improper manner.

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

11. A presumption has been raised under the said provision relating to service of notice upon the assessee in respect of assessment or reassessment proceedings. According to this provision, where an assessee appears in any proceedings or cooperates in any enquiry relating to assessment or reassessment proceedings, it shall be presumed that the assessee has been validly served and it shall not be open to the assessee to object that the notice was not served upon him or was not served in time or was served upon him in an improper manner. However, an exception to the aforesaid presumption has been made in a case where such objection has been raised before completion of assessment or reassessment. The provision has been made effective from 01.04.2008 and therefore, shall apply to all pending proceedings. The Central Board of Direct Taxes issued circular No. 1 of 2009 dated 27th March, 2009 (2009) 310 ITR (St.) 42 giving explanatory notes on the provisions relating to direct taxes contained in Finance Act, 2008. Clause 42.7 (at page 86 of the report) is relevant which relates to applicability of this provision and reads thus:

"42.7 Applicability - This amendment has been made applicable with effect from 1st April, 2008. This means that the provision of new-section 292BB shall apply in all proceedings which are pending on 1st April, 2008."

8. Adverting to the judgment in Rohtas''s case (supra), it was a case where the assessee had filed the return in the status of an ''Individual'' and the notice was also issued in that status. However, the Assessing Officer framed the assessment

in the status of ''HUF'' which was seriously disputed by the assessee. The Tribunal had also recorded therein that the assessee had never made any statement about the status of HUF in any letter on which the Assessing Officer had placed heavy reliance. It was in these circumstances that the assessment in the status of HUF was held to be invalid. In the present case, undisputedly the assessee himself had filed the revised return on 26.3.2002 in the status of HUF declaring the same income as was disclosed by him in his original return filed on 24.1.2001 in the status of individual. The relevant observations noted by the Assessing Officer may be reproduced with advantage which read thus:-

"I. Status:- The assessee claimed individual status in the original return filed on 24.1.2001 which he subsequently revised on 26.3.2002 in the status of HUF. On being specifically confronted on this issue, the assessee has contended that his correct status is HUF but through inadvertence he declared the individual status in the original return. In support of his claim he has furnished copy of the bank challan for deposit of tax wherein the status of HUF has been shown at the appropriate place. Further more, it was also brought on record that in the past as well the assessee was assessed in the status of HUF. The contentions of the assessee are verifiable from the records and as such I am convinced with the claim of the assessee for HUF status. Accordingly I allow the status of HUF to the assessee."

Thus, no advantage can be derived by the assessee from the said pronouncement.

9. The fact that the assessee himself had filed the return in the status of HUF coupled with the provisions of Section 292BB of the Act, the Tribunal was not right in declaring the assessment order as non-est.

10. In view of the above, the substantial questions of law are answered in favour of the revenue and against the assessee. The appeal is allowed and the order dated 31.7.2008 (Annexure A-III) passed by the Tribunal is set aside. The matter is remanded to the Tribunal to adjudicate the issue on merits after affording an opportunity of hearing to the parties in accordance with law.