(2014) 01 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : ITA No. 91 of 2007

Commissioner of Income Tax — APPELLANT

Vs

Mohinder Singh — RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:
Income Tax Act, 1961 — Section 139(1), 139(4), 144, 147, 148

Citation : (2014) 01 P&H CK 0060

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Rajesh Katoch, Advocates for the Appellant

Judgement

Ajay Kumar Mittal, J.—This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 26.7.2006, Annexure A.III, passed by the Income Tax Appellate Tribunal, Chandigarh Bench ''B'', Chandigarh (in short, "the Tribunal") in ITA No. 504/ CHANDI/2004 for the assessment year 1995-96, claiming following substantial question of law:-

"Whether on the facts and law, the Hon''ble Income Tax Appellate Tribunal was justified in setting aside the reassessment order under Section 147 on the ground that notice under Section 148 was not served on the assessee, disregarding the fact that notice under Section 148 was issued within the limitation period under Section 149 of the I.T. Act and that the ground regarding service of notice was not decided by CIT(A)?

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The respondent is an individual. He filed his income tax return for the assessment year 1995-96 on 28.5.1999 declaring income of Rs. 63,162/- besides agricultural income of Rs. 10,000/-. As the return was filed beyond the period stipulated under section 139(1)/139(4) of the Act and was invalid, proceedings under section 147 of the Act were initiated by

issuing notice under Section 148 of the Act on 15.3.2002 after obtaining prior approval of the Joint Commissioner of Income Tax, Range I, Ludhiana. During the course of assessment proceedings, the assessee contested the legality of notice under section 148 of the Act without complying with the provisions of the said section i.e. filing of return within the prescribed period. He did not file any information during the course of assessment proceedings and the assessment was completed under section 144 vide order dated 31.3.2003 at an income of Rs. 21,31,522/- apart from agricultural income of Rs. 10,000/- after taking into account the material available on record. Aggrieved by the order, the respondent preferred appeal before the Commissioner of Income Tax (Appeals)-1 Ludhiana. Vide order dated 21.1.2004, Annexure A.II, the appeal was allowed and the additions made by the Assessing Officer were deleted on the basis of material furnished before him. Not satisfied with the order, the revenue filed appeal before the Tribunal. Vide order dated 26.7.2006, Annexure A.III, the appeal was dismissed. The Tribunal also admitted the ground of the assessee about validity of proceedings under section 147 under rule 27 of ITAT Rules 1963 and held that notice under section 148 of the Act had not been served on the assessee which was the precondition for reopening the assessment under section 147 and hence subsequent proceedings under section 147 of the Act and the reassessment were null and void. Hence the present appeal by the revenue.

3. Learned counsel for the revenue submitted that the Tribunal had erred in recording a finding that no notice was ever issued to the assessee respondent. It was submitted by the counsel that notice under Section 148 of the Act was issued to the assessee vide dispatch No. 1812 and the Tribunal had erred in recording a finding that the dispatch register entry at Serial No. 1812 is in the name of Magh Singh. He referred to entry in the said register at 1820 to canvass that notice to Magh Singh was entered at this serial number and not at Serial No. 1812. The original dispatch register was produced. Further relying upon judgments of this Court in V.R.A. Cotton Mills (P) Limited v. Union of India and others, CWP No. 18193 of 2011, decided on 27.9.2011 Commissioner of Income Tax Vs. Panchvati Motors (P.) Ltd., and Om Sons International Vs. CIT and provisions of section 292BB introduced by Finance Act 2008 w.e.f 1.4.2008, learned counsel argued that the provisions of section 292BB were applicable in pending cases as on 1.4.2008 as held therein. The said provision is applicable in the present case as well and therefore, the matter requires to be remanded to the Tribunal to adjudicate afresh on merits.

4. We have heard learned counsel for the appellant and perused the record. The legal representatives of the respondent assessee as per office record have been served. No one has chosen to oppose the appeal. After hearing learned counsel for the appellant, we find merit in his contentions.

5. A perusal of the original record shows that the Tribunal had wrongly recorded a finding that there was entry at Sr. No. 1812 in the name of Magh Singh which is not correct. Entry at Sr.No.1820 is in the name of Magh Singh whereas entry

No. 1812 is in the name of Mohinder Singh. Furthermore, Section 292BB came up for consideration before this Court in Om Sons International''s case (supra) wherein it was held as under:-

"8. It would be expedient to refer to Section 292BB of the Act. Section 292BB had been inserted by Finance Act, 2008 with effect from 1.4.2008 whereby presumption is made relating to service of notice on the assessee in respect of assessment and reassessment proceedings. The scope and applicability of the aforesaid provision on pending proceedings came up for consideration in Commissioner of Income Tax, Bathinda v. M/s. Panchvati Motors (P) Ltd., ITA 292 of 2008 decided on 3.5.2011, wherein it was held as under:

"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 co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of the Act, which is required to be served upon 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 an 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.''

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 1.4.2008 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''."

6. In view of the above, the aforesaid provision would be applicable to the present case. Accordingly, while allowing the appeal, we set aside the impugned order dated 26.7.2006, Annexure A.III and remand the matter to the Tribunal to decide it afresh on merits in accordance with law.

7. The original record i.e. Dispatch register be returned to the learned counsel for the revenue under proper receipt.

