
(2008) 03 P&H CK 0088
In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax

APPELLANT

Vs

M.P. Singh

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Income Tax Act, 1961 — Section 142, 143, 147, 148, 260A

Citation : (2008) 217 CTR 487 : (2008) 174 TAXMAN 423

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The Revenue has filed the present appeal u/s 260A of the IT Act, 1961 (for short "the Act") against the order dt. 5th April, 2007, passed by the Income Tax Appellate Tribunal, Delhi Bench I, New Delhi (for short the Tribunal"), in ITA No. 316/Del/2005 for the asst. yr. 1999-2000 raising the following proposed substantial questions of law:

(a) Whether on the facts and in the circumstances of the case, the Hon"ble Tribunal was right in law in holding that issue of notice u/s 148 was invalid and that the assessment so framed lacks jurisdiction?

(b) Whether on the facts and in the circumstances of the case, the Hon"ble Tribunal was right in law in holding that the AO was not right in issue of notice u/s 148 without framing the assessment in response to the earlier notice issued u/s 142(1) of the IT Act on 23rd Feb., 2000, though no valid return was filed by the assessee in response to notice dt. 23rd Feb., 2000, and the return filed by the assessee on 18th Oct., 2001, was treated as invalid return and was filed.

2. The assessee did not furnish his return of income voluntarily. The AO issued notice u/s 142(1) of the Act on 23rd Feb., 2000, calling upon him to furnish the return of the income. The assessee did not file any return upto 31st March, 2001, i.e., the date upto which the assessee could file the said return. The assessee filed his return of income on 18th Oct., 2001, declaring income of Rs. 5,56,580.

Since the said return filed by the assessee was treated as invalid return, the AO issued notice u/s 148 of the Act on 21st Nov., 2002, after recording reasons. Assessment u/s 143(3)/147 of the Act was completed on 26th March, 2004, at an income of Rs. 26,04,210.

3. Aggrieved against this order of assessment, the assessee filed an appeal before CIT(A) on the ground that since proceedings u/s 142(1) of the Act had been initiated by the AO vide notice dt. 23rd Feb., 2000, and in response to the said notice, return of income had been duly filed by the appellant, therefore, there was nothing in law which could support the action of the AO to issue notice u/s 147 of the IT Act as there was no case for the AO to hold that the income had escaped assessment. Before the CIT(A), the following undisputed facts emerged in the case:

(a) That proceedings u/s 142(1) had indeed been initiated by the AO for the asst. yr. 1999-2000 vide notice dt. 23rd Feb., 2000 and this fact is no more in dispute.

(b) That no assessment order was at all framed to conclude the proceedings initiated u/s 142(1).

(c) That the AO did not have any information on record regarding the initiation of proceedings u/s 142(1) prior to this fact having brought on record by the appellant.

(d) That there was no escapement of income once the return had been duly filed.

(e) And for once return having so filed in response to the proceedings pending u/s 142(1), the question of initiating action u/s 147 r/w Section 148 could not arise.

In view of these undisputed facts, the CIT(A) held that the notice u/s 148 of the Act was a invalid notice and the assessment so framed u/s 143(2) lacks jurisdiction. The assessment was therefore, quashed by the CIT(A).

4. Not satisfied with the order of the CIT(A), the Revenue filed the appeal before the Tribunal.

5. After hearing the rival submissions, the Tribunal gave a categoric finding of fact to the effect that the AO initiated proceedings u/s 142 vide notice dt. 23rd Feb., 2000, and no assessment order was framed at all to conclude the proceedings initiated u/s 142(1) of the Act and therefore, notice u/s 148 of the Act was invalid. On the basis of this categoric conclusion on facts reached by the Tribunal by relying upon the judgment of Delhi High Court in the case of KLM Royal Dutch Airlines v. Asstt. Director of IT (2007) 208 CTR (Del) 33 : (2007) 159 Taxman 191 (Del) and also the decision of the Mumbai Bench of the Tribunal in the case of ITO v. Capt. A.P. Kamat IT Appeal Nos. 1084 to 1087 and 1089 to 1090/Mum/2003, held that since the machinery of reassessment was already set in motion by issuance of earlier notice and reassessment was not completed for whatever reasons, the stand of the AO cannot be accepted as the notice u/s 148 of the Act was invalid notice, and the assessment so framed u/s 143(2) lacks

jurisdiction. The appeal of the Revenue was dismissed.

6. Feeling aggrieved against the said order of the Tribunal, the Revenue has filed the present appeal in this Court.

7. Shri Yogesh Putney, Advocate, learned Counsel for the Revenue has vehemently argued that the assessee did not file any return of income in response to notice dt. 23rd Feb., 2000, issued u/s 142(1) of the Act by 31st March, 2001, and the return filed by the assessee on 18th Oct., 2001, was not a valid return and therefore, the said return was treated as invalid return by the AO and on the basis of the details and information on record, the AO has reason to believe that assessee's income for the year under consideration had escaped assessment and therefore, a valid notice u/s 148 of the Act was issued to the assessee on 21st Nov., 2002, after recording reasons in writing.

8. We have heard learned Counsel for the appellant. However, we find no merit in the arguments raised by the counsel for the Revenue. Undisputedly, the proceedings u/s 142(1) of the Act had been initiated by the AO for the asst. yr. 1999-2000 vide notice dt. 23rd Feb., 2000, but no assessment order was at all framed to conclude these proceedings initiated u/s 142(1) of the Act. The AO did not have any information on record regarding the initiation of proceedings u/s 142(1) of the Act, prior to this fact having been brought on record by the assessee and there was no escapement of income once the return had been filed.

9. In view of the above undisputed facts, the question of initiating action u/s 147 r/w Section 148 of the Act could not arise as the machinery of reassessment was already set in motion by issuance of earlier notice and if reassessment is not completed for whatever reasons, it could not be revived by issuing fresh notice as the time for completing reassessment in pursuance of earlier notice had already expired. The Tribunal also held that no specific defect has been pinpointed by the Revenue for the conclusions arrived at by the CIT(A).

Hence, no substantial question of law is arising from the impugned "order passed by the Tribunal for the determination of this Court.

Thus, the appeal is hereby dismissed.