(1989) 01 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : IT Reference No. 61 of 1982

Commissioner of Income Tax APPELLANT

Vs

Mrs. Usha Aggarwal RESPONDENT

Date of Decision : 21-01-1989

Acts Referred:
Income Tax Act, 1961 — Section 143, 143(1), 143(3), 144B, 147

Citation : (1989) 46 TAXMAN 115

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; D.K. Gupta, for the Respondent

Judgement

S.S. Sodhi, J.—The matter here pertains to the assessment year 1973-74. On 29-12-1973 assessment u/s 143(1) of the income tax Act, 1961 (''the Act'') was framed on a total income of Rs. 4,081. Later, the ITO learnt that the assessee had received gifts and advances from various persons whose financial position did not warrant these gifts and advances being made to the assessee. A notice u/s 147(b) read with section 148 of the Act was, consequently, caused to be served upon the assessee on 20-3-1978. In the enquiry that followed, the ITO formed the opinion that the addition to be made exceeded Rs. 1 lakh and it was, therefore, necessary to refer the draft assessment to the IAC u/s 144B of the Act. The draft assessment so framed, i.e., u/s 144B was then sent to the assessee on 17-3-1979 for inviting objections. These objections were then forwarded to the IAC for his directions u/s 144B. These directions were received by the ITO on 4-9-1979, on which date he proceeded to complete the assessment. The Tribunal, accepting the assessee''s contention held the assessment of 4-9-1979 to be barred by time, and it, consequently, quashed it.

The Tribunal also negatived the plea of the revenue that the draft assessment sent to the assessee on 17-3-1979 be taken to be a valid assessment.

2. It is in this background that the following questions have now been referred to

this Court for its opinion:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions contained in section 144B of the income tax Act, 1961 did not apply to assessments made u/s 147 read with section 148?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law that reassessment completed on 4-9-1979 was barred by time?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law that the unsigned draft assessment order communicated to the assessee inviting his objections on 17-3-1979 was not a valid assessment nor it was the assessment in issue in appeal before it?

It will be seen that the main question that arises for consideration here is with regard to limitation. Time limit for completion of assessment and reassessment is provided by the provisions of section 153 and in terms thereof, the assessment had to be made either before the expiry of four years from the end of the assessment year in which the income first became assessable or before the expiry of one year from the date of the service of the notice u/s 148, whichever date was later. In the present case, it will be seen that the notice u/s 148 was served upon the assessee on 20-3-1978 and the assessment was not completed till 4-9-1979, i.e., beyond the period of one year from that date, viz., the date of service of notice u/s 148.

3. In order to bring the assessment within limitation, there was a two-fold contention sought to be put forth on behalf of the revenue; one that all assessments whether u/s 147(a) or (b) or u/s 143(3) could only be made u/s 143 and, second that the draft assessment of 17-3-1979 be taken to be a valid assessment even if it was not signed. Neither of these contentions can, however, be sustained. There is indeed a clear distinction between the assessment u/s 143 and that u/s 147 read with section 148. The assessment u/s 147 does not depend upon the authority of section 143 for its completion. Section 147 itself authorises the ITO to assess, reassess, recompute the loss or the depreciation allowance, as section 143(3) enables the ITO to make the assessment. The authority in section 147 to make the assessment is quite independent of the authority to make the assessment u/s 143. The assessment u/s 147 is, thus, a species different from the assessment u/s 143(3) and both have, therefore, been treated differently in the Act.

Further reference to the provisions of section 144B would show that they specifically mention section 143(3) and not section 147. The intention of the Legislature ''must be construed thereby to exclude section 147 from its applicability. This being so, there can be no escape from the conclusion that the assessment made on 4-9-1979 cannot be taken to be within time by taking it to be an assessment u/s 143(3) too.

4. As regards the other claim, namely, that the draft assessment be treated as a valid assessment, this has to be noticed only to be rejected. If this were to be taken to be at par with the final assessment, it would be hit by the principle of natural justice, namely, the framing of it behind the back of the assessee. At any rate, as the very description of it shows that it was only a draft assessment, on no account can it be said to be on the same footing as the final assessment. In this view of the matter, all the questions posed are answered in the affirmative, in favour of the assessee and against the revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.