

(1987) 11 KL CK 0028

In the High Court Of Kerala

Case No : Income-tax Reference No. 215 of 1982

Commissioner of Income Tax

APPELLANT

Vs

N. Krishnan

RESPONDENT

Date of Decision : 25-11-1987

Acts Referred:

Income Tax Act, 1961 — Section 144A, 144A(1), 144B, 144B(1), 153

Citation : (1988) 67 CTR 276 : (1988) 172 ITR 604

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; Sudheer Gopi, for the Respondent

Judgement

T. Kochu Thommen, J.—The following question has been, at the instance of the Revenue, referred to us by the Income Tax Appellate Tribunal, Cochin Bench :

"Whether, on the facts and in the circumstances of the case, the additions of Rs. 13,500, Rs. 25,000 and Rs. 22,500, as directed by the Inspecting Assistant Commissioner u/s 144A are barred by limitation ? "

2. In respect of the assessment year 1974-75, the Income Tax Officer in exercise of his power u/s 144B of the Income Tax Act, 1961, proposed to make a variation in the income returned by the assessee for the previous year in regard to certain items. The draft order was forwarded to the assessee calling for his objections. In regard to four of the items on which variation was proposed to be made, the assessee's submissions were accepted and the amounts were computed accordingly. In regard to the other items, the assessee raised objections. The officer accordingly forwarded the draft order and the objections of the assessee to the Inspecting Assistant Commissioner. The Inspecting Assistant Commissioner, after considering the objections and after hearing the assessee's representative, recomputed the amounts in regard to the four items on which the Income Tax Officer had originally accepted the submissions made by the assessee. It is stated in the order of the Inspecting Assistant Commissioner that

the four items in question were recomputed in concurrence with the assessee's representative and it was on the basis of such concurrence that the additions were made. Three of the additions so made by the Inspecting Assistant Commissioner were the subject-matter of challenge by the assessee in his appeal before the Appellate Assistant Commissioner, but without success. The Tribunal, on further appeal by the assessee, however, accepted the assessee's contentions and held that the re-computation of the items in question was made by the Inspecting Assistant Commissioner in the purported exercise of his power u/s 144A after the normal period of assessment prescribed u/s 153(1)(a)(iii) had expired and was, therefore, time-barred. The Tribunal accordingly set aside the additions made on the basis of the re-computation in regard to the three items which are now the subject-matter of the question referred to us.

3. Counsel for the Revenue contends that in a case where reference has been validly made u/s 144B before the assessment is completed, the period of limitation, prescribed u/s 153(1)(a)(iii), for completion of the assessment is extended by reason of the exclusion, in computing that period of the time specified under Explanation 1(iv) to Section 153. During such extended period, it is open to the Inspecting Assistant Commissioner to exercise his power u/s 144A and give such directions as he deems fit to the Income Tax Officer in regard to any matter connected with the assessment, even when such a matter does not figure in the draft order and the normal period prescribed by Section 153(1) has expired. Counsel submits that by recourse to Section 144A and in exercise of the suo motu power conferred by that section, it is open to the Inspecting Assistant Commissioner to give any direction which he deems necessary to the Income Tax Officer and the officer is bound to carry out such a direction. Counsel further submits that the re-computation of the amounts as regards the four items on which the assessee raised no objections was an exercise of the suo motu power u/s 144A(1) and such exercise of power was not barred by limitation by reason of the extension of item in terms of Explanation 1(iv) to Section 153 consequent on the reference made u/s 144B.

4. Counsel for the assessee, Shri Sudheer Gopi, however, submits that the period of limitation prescribed u/s 153(1)(a)(iii) is extended in terms of Explanation 1 only to the extent that the Income Tax Officer is authorised to make a reference u/s 144B. Such extended period cannot be availed of for any other purpose. The suo motu power u/s 144A can be exercised only within the normal period of two years prescribed by Section 153(1)(a)(iii). Counsel further submits that, in any view, in regard to the four items on which the amounts were recomputed by the Inspecting Assistant Commissioner, there was no reference as the amounts in regard to these items had been varied by the Income Tax Officer in accordance with the submission of the assessee. In regard to such items, the Inspecting Assistant Commissioner, counsel says, was not entitled to make a re-computation, even if it was done with the concurrence of the assessee.

5. The normal period of two years prescribed by Section 153(1)(a)(iii) for

completion of assessment is automatically extended for a further period, as provided under Explanation 1(iv) to that section, as soon as a draft order u/s 144B(1) is forwarded to the assessee by the Income Tax Officer. This is because Explanation 1 to Section 153 provides for exclusion, in specified cases, of the specified length of time in the computation of the relevant period of limitation. When the time is so extended, there being only one assessment, all questions relating to that assessment are open to be dealt with during the extended period. Since the Inspecting Assistant Commissioner has power u/s 144A to issue directions either suo motu or on a reference or on an application by an assessee, he may suo motu issue directions whenever he finds it necessary to do so in regard to any matter relating to the assessment. If directions are issued by him on matters not arising from the reference, as in the present case, such directions emanate from his suo motu power u/s 144A. The time for completing the assessment having been statutorily extended, by reason of the reference, for the additional period prescribed under Explanation 1(iv) to Section 153, the re-computation of the amounts by the Inspecting Assistant Commissioner, whether or not with the concurrence of the assessee, on items on which the assessee had not raised any objection on receipt of the draft order, was a perfectly valid exercise of power in terms of Section 144A(1).

6. Accordingly, we answer the question in the negative, that is, in favour of the Revenue and against the assessee.

7. We make it clear that we express no view as regards the quantum of the additions made on the three items in question, for that was not a matter which, although raised, was dealt with by the Tribunal.

8. We direct the parties to bear their respective costs in the tax referred case.

9. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.