(2007) 01 RAJ CK 0115

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

Prameshwar Bohra RESPONDENT

Date of Decision : 04-01-2007

Acts Referred:
Income Tax Act, 1961 — Section 148

Citation : (2008) 301 ITR 404

Hon'ble Judges : Rajesh Balia, J;Chatra Ram Jat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the order of the Income Tax Appellate Tribunal, Jodhpur Bench Jodhpur dated December 6, 2001. While admitting the appeal on February 17, 2003, the following questions of law have been framed as substantial questions of law for consideration in this appeal:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal, was justified in quashing the notice issued on June 17, 1997, u/s 148 of the Income Tax Act, 1961, for the assessment year 1993-94 by resorting to proviso to Section 147 even by holding that there is no failure on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment in question?

2. Whether, on the facts and in the circumstances of the case and on a correct interpretation of sections 68 and 69 of the Income Tax Act, 1961, the Tribunal was right in holding that the unexplained investment/cash credit amounting to Rs. 1,55,316 appearing in the books of account on the first day of the previous year relevant to the assessment year 1993-94 was not taxable as income of the assessee for the said previous year?

2. The first question does not give out the real picture of the controversy raised and decided by the Tribunal inasmuch as it is not a case in which the question of expiry of limitation for assuming jurisdiction to issue notice u/s 148/147 arises

for consideration. In fact, the impugned notice for reassessment of the income for the assessment year 1993-94 has been issued on June 17, 1997, that is to say before the expiry of 4 years from the end of the assessment year 1993-94, hence, the case falls within the province of a proviso to Section 147 or u/s 149 providing limitation for initiating proceeding u/s 147 which remains within limitation. The question really was raised about the validity of taking action u/s 147 at all. In fact, in relation to the assessment year 1993-94, u/s 147 the first notice was issued on July 11, 1996, itself and the income which allegedly escaped assessment from tax was the one which is the subject-matter of question No. 2 that is to say an amount of investment/cash credit of Rs. 1,55,316 was appearing in the books of account of the assessee on the first day of the previous year relevant to the assessment year 1993-94 that is to say on April 1, 1992, or in other words that was carried forwarded from the previous year ending on March 31, 1992. Apparently question No. 1 has not been framed to bring out this controversy. Question No. 2 is a question which relates to the merits of the additions made in the assessee''s income through reassessment as we shall presently notice that question No. 2 deserves to be decided in favour of the assessee and against the Revenue, we do not deem it necessary to reframe the question about the validity of reassessment proceedings in the present case as it would not be necessary to decide the case.

3. The notice issued on July 11, 1996, was not pursued by the Assessing Officer, inter alia, on the ground that it was issued without obtaining prior approval from the Additional Commissioner of Income Tax and hence, after seeking prior approval of the Additional Commissioner of Income Tax fresh notice was issued u/s 147/148 on June 17, 1997. The asses-see has raised the contention that since the first notice was already pending, the second notice could not have been issued and, secondly, that there is no provision in the Income Tax Act to vacate the already issued notice and considering it to be pending, by ignoring the vacation order, no fresh I notice could be issued.

4. On the merit of the additions made in the income of the assessee, there is a clear finding and about which there is no dispute that the amount added in the income of the assessee as unexplained investment or cash credit in the assessment year 1993-94 was the same amount which was credited in the books of account of the assessee for the previous year ending on March 31, 1992. The Tribunal has categorically come to a finding, and that finding is not under challenge, that this is not a case of cash credit entered in the books of account of the assessee during the year but it is a case in which the assessee has invested the capital in the business and this amount was shown as a closing capital as on March 31, 1992, and on April 1, 1992, it was an opening balance. Considering this aspect, the Tribunal has come to the conclusion that what was already credited in the books of account ending on March 31, 1992, for the financial year 1991-92 relevant to the assessment year 1992-93 cannot be an unexplained cash credit or investment in the books of account maintained for the financial year 1992-93, the accounting period of which ends on March 31, 1993, so as to

warrant its consideration as unexplained investment or cash credit for its relevant assessment year 1993-94.

5. It does not require any elaborate argument that a carried forward amount of the previous year does not become an investment or cash credit generated during the relevant year 1993-94. This alone is sufficient to sustain the order of the Tribunal in deleting the amount of Rs. 1,55,316 from the assessment for the assessment year 1993-94. Since the appeal succeeds on the merits of the assessee''s case in respect of the additions made in the income computed on reassessment the validity of notice dated June 17, 1997, need not be gone into.

Accordingly, this appeal fails and is hereby dismissed. No order as to costs.

